1561

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. ~~1164.~~ 675

THE UNITED STATES, APPELLANT,

vs.

E. C. KNIGHT COMPANY, SPRECKELS SUGAR REFINING
COMPANY ET AL.

PPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE THIRD CIRCUIT.

FILED MARCH 29, 1894.

(15548.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1164.

THE UNITED STATES, APPELLANT,

vs.

E. C. KNIGHT COMPANY, SPRECKELS SUGAR REFINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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THE UNITED STATES, APPELLANT,

VS.

E. C. KNIGHT COMPANY, SPRECKELS SUGAR REFINING COMPANY ET AL.

21217

a *Transcript of record.*

United States circuit court of appeals for the third circuit.

March term, 1894. No. 15.

THE UNITED STATES OF AMERICA, APPELLANT,
and
E. C. KNIGHT COMPANY, SPRECKELS' SUGAR Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal place of business in the city of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey and having its principal place of business in the city of Jersey City, in the said State, and John E. Searles, jr., a citizen of the State of New York, appellees.

Appeal from the circuit court of the United States in and for the eastern district of Pennsylvania.

Filed February 19, 1894.

b Be it remembered that on the 19th day of February, A. D. 1894, Ellery P. Ingham, esquire, United States attorney, appears in court and files a transcript of the record in the appeal of the United States of America, appellant, vs. E. C. Knight Company et. al., which, being read, is in the words and figures following, to wit

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (1)

IN EQUITY.

April Sessions, 1892. No. 38.

Between

THE UNITED STATES OF AMERICA,
Complainant,

and

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of Business in the city of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckles, Louis Spreckles, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York.
Defendants.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA. } *ss.*

Pleas and Proceedings before the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit of April Sessions, 1892. No. 38. (2)

It is thus contained:

Be it remembered, that on the 2d day of May, A. D. 1892, the United States of America, by its Solicitors, Robert Ralston, Esquire, and Ellery P. Ingham, Esquire, come into our Court here and file its bill of complaint against E. C. Knight Company, *et al.*, which being read, is in the following words and figures, to wit.:

(3) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

April Sessions, 1892. No. 38.

Between

THE UNITED STATES OF AMERICA,
Complainant,

and

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are a corporation incorporated under the laws of Pennsylvania, and having their principal places of business in the city of Philadelphia, in the said State: Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York,

Defendants.

(4) *To the Honorable the Judges of the said Court:*

The United States of America, by Ellery P. Ingham, Esq., its attorney, brings this, its bill of complaint, and comes and respectfully represents:

1. That he is the United States Attorney for the Eastern District of Pennsylvania, and that, he is informed and believes, that defendants herein named have violated the provisions of an Act of Congress approved July 2d, 1890, chapter 647 (26 Sat. at Large, 209), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," providing that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade and commerce among the several States is illegal, and that persons who shall monopolize or attempt to monopolize, or combine or conspire with other persons to

monopolize trade or commerce among the several States shall be guilty of a misdemeanor; that the Circuit Courts of the United States have jurisdiction to prevent and restrain violations of the said Act. It is further averred that your orator upon the 11th day of April, 1892, received instructions from the Attorney-General to institute these proceedings in equity to prevent and restrain the violation of the said Act as hereinafter set out.

2. Your orator is informed, avers and believes that the above-named defendants, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D, Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, and John Birkbeck, are citizens of the the city of Philadelphia, in the State of Pennsylvania, and that the above-named defendant, Claus Spreckels, is a citizen of the State of California.

3. Your orator is informed, avers and believes that the above-named defendant, the American Sugar Refining Company, is a corporation incorporated under and by virtue of | the provisions of the Act of the (5) Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof. That its certificate of incorporation filed on or about 9th January, 1891, declares its name to be The American Sugar Refining Company. That the place in New Jersey where its business is to be conducted is Jersey City, in the County of Hudson, in which the principal part of its business in said State is to be transacted. That the principal place of business out of the said State is to be in the city of Brooklyn, county of Kings, in the State of New York. That the States of Maine, Massachusetts, Connecticut, New York, Pennsylvania, Louisiana, Missouri, California and Maryland are the other States in the United States in which it proposes to carry on operations; and that the objects for which said company is formed are the purchase, manufacture, refining and sale of sugar, molasses and melads, and all lawful business incidental thereto. That the business which is to be carried on out of the said State, is a part of the purchase, manufacture, refining and sale of sugar, molasses and melads, and all the lawful business incidental thereto That the total amount of the capital stock of said company is $500,000,000, divided into five hundred thousand shares of the par value of $100 dollars each, one-half general and one-half preferred.

4. It is further averred that the E. C. Knight Company is a corporation incorporated under an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto. That its certificate of incorporation, filed on or about August 15th, 1884, declares its name to be E. C. Knight Company; that it is formed for the purpose of importing, manufacturing, refining and dealing in sugars and molasses, and that its busi-

ness is to be transacted in the City of Philadelphia; that the amount of its capital stock is $800,000, divided into eight thousand shares of the par value of $100.

(6) 5. It is further averred that the said defendant, the Franklin Sugar Refining Company, is a corporation incorporated under an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the several supplements thereto. That its certificate of incorporation filed on or about February 12th, 1890, declares its name to be the Franklin Sugar Refining Company; that it is formed for the purpose of the manufacture of sugar and the purchase of raw material for that purpose; that its business is to be transacted in the City of Philadelphia; that the amount of its capital stock is $5,000,000, divided into fifty thousand shares of the par value of $100.

6. It is further averred that the said defendant, Spreckels' Sugar Refining Company, is a corporation incorporated under an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto. That its certificate of incorporation, filed on or about June 9th, 1890, declares its name to be Spreckels' Sugar Refining Company; that it is formed for the purpose of refining sugar, which will involve the buying the raw material therefor and selling the manufactured product, and of doing whatever else shall be incidental to the said business of refining; that its business is to be transacted in Philadelphia; that the amount of its capital stock is $5,000,000, divided into fifty thousand shares of the par value of $100.

7. It is further averred that the said defendant, the Delaware Sugar House, is a corporation incorporated by letters patent issued by the Governor of the Commonwealth of Pennsylvania under and by virtue of an Act of the General Assembly of the Commonwealth of Pennsylvania, approved 29th April, 1864, entitled "Supplement to an Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes, approved 18th July, 1863," under which the Governor of the Com-
(7) monwealth of Pennsylvania was authorized | and required to issue letters patent to all companies formed under the provisions of an Act entitled "An Act relating to corporations for mechanical manufacturing, mining and quarrying purposes," approved 18th July, 1863. That its certificate of incorporation, upon which the said letters patent were issued, filed on or about October 19th, 1868, declares its name to be the Delaware Sugar House; that it is formed for the purpose of the manufacture of sugar and syrups and preparing the same for market, and the transaction of such work or business as may be necessary or proper for the proper management of the business of manufacture; that the amount of its capital stock is fixed at $96,000, divided into ninety-six shares of the par value of $1000 each.

8. Your orator is informed, avers and believes that the said defendants, E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin

Sugar Refining Company and the Delaware Sugar House, all and each of them were from the time of their incorporation until on or about March 4th, 1892, independently engaged in the manufacture and sale of refined sugar. That the product of their refineries amounted to thirty-three per cent. of the total amount of sugar refined in the United States. That they were competitors with the said American Sugar Refining Company and with one another in the said business of refining sugar, and that the products of their several refineries were sold and distributed among the several States of the United States, and that all the said companies were engaged in trade or commerce with the several States and with foreign nations.

The said defendant, the American Sugar Refining Company, as appears by its certificate of incorporation heretofore referred to, was formed for the purpose of doing business in the states of New Jersey, Maine, Missouri, Connecticut, New York, Pennsylvania, Louisiana, Maryland, California and Massachusetts. The said company, by means of various contracts and agreements had on and prior to 4th March, 1892, obtained the control of all the sugar refineries in the States of New Jersey, New York, Massachusetts, Maryland, Missouri, | Louisiana and California; (8) and with the exception of the Revere Sugar Refinery, of Boston, Mass., and the refineries belonging to the said four defendants in Philadelphia, owned or controlled all the sugar refineries in the United States. The said Revere Sugar Refinery, of Boston, produced annually about two per cent. of the total amount of sugar refined in the United States. The said four defendants produced annually about thirty-three per cent. of the total amount of sugar refined in the United States. In order that the said defendant, the American Sugar Refining Company, might obtain complete control of the production and price of refined sugar in the United States, they, the said American Sugar Refining Company and John E. Searles, Jr., entered into an unlawful and fraudulent scheme to purchase the stock, machinery and real estate of the said defendants, by which they attempted to obtain the control of all the sugar refineries in this district for the purpose of restraining the trade thereof with other States as theretofore carried on independently by the said defendants.

In pursuance of this said unlawful and fraudulent scheme, the said defendant, John E. Searles, Jr., on or about March 4th, 1892, entered into a contract with the said defendants, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, and E. C. Knight Company, by which it was agreed that the said John E. Searles, Jr., in consideration of the delivery by him of $2,050,000 of the stock of said The American Sugar Refining Company—one-half of the said stock preferred and one-half common—to the said defendants, should have the right to demand of the said defendants the delivery to him of all the stock of the said E. C. Knight Company, or in lieu thereof the refinery, machinery, real estate, &c., belonging to the said E. C. Knight Company; and in pursuance of the said contract the said defendants delivered to the said John E. Searles, Jr., 7,950 shares of the capital stock of the said E. C. Knight Company, and the said John E. Searles, Jr., delivered to the said defendants a large number of the shares of the capital stock of the said American Sugar Refining Company, the amount thereof being to your orator unknown.

(9) And as part of the said fraudulent and unlawful scheme, the said defendant, John E. Searles, Jr., on or about March 4, 1892, entered into a contract with the said defendants, Claus Spreckels, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, and Spreckels' Sugar Refining Company, by which it was agreed that the said defendant, John E. Searles, Jr., in consideration of the delivery by him to the said defendants of a large amount of the capital stock of the American Sugar Refining Company, which said amount is unknown to your orator, should have the right to demand of the said defendants the delivery to him of all the stock of the said Spreckels' Sugar Refining Company, or in lieu thereof the refinery, machinery, real estate, etc., belonging to the said company. And thereafter, in pursuance of the said unlawful and fraudulent contract, the said defendants did deliver all the stock of the said Spreckels' Sugar Refining Company to the said John E. Searles, Jr., and the said John E. Searles, Jr. did deliver to the said defendants a large amount of the capital stock of the American Sugar Refining Company, which amount is to your orator unknown.

And as part of the said fraudulent and unlawful scheme, the said defendant, John E. Searles, Jr., on or about March 4, 1892, entered into a contract with the said defendants, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier and the Franklin Sugar Refining Company, by which it was agreed that the said defendant, John E. Searles, Jr., in consideration of the delivery by him to the said defendants of a large amount of the capital stock of the American Sugar Refining Company, which said amount is unknown to your orator, should have the right to demand of the said defendants the delivery to him of all the stock of the said Franklin Sugar Refining Company, or in lieu thereof the refinery, machinery, real estate, etc., belonging to the said company. And thereafter, in pursuance of the said unlawful and fraudulent contract, the said defendants did deliver all the stock of the said Franklin Sugar Refining
(10) Company to the said | John E. Searles, Jr., and the said John E. Searles, Jr., did deliver to the said defendants a large amount of the capital stock of the American Sugar Refining Company, which amount is to your orator unknown.

And as part of the said fraudulent and unlawful scheme, the said defendant, John E. Searles, Jr., on or about March 4, 1892, entered into a contract with the said defendants, J. Vaughn Merrick, W. H. Merrick, John E Cope, John Birkbeck and the Delaware Sugar House, by which it was agreed that the said defendant, John E. Searles, Jr., in consideration of the delivery by him to the said defendants of a large amount of the capital stock of the American Sugar Refining Company, which said amount is unknown to your orator, should have the right to demand of the said defendants the delivery to him of all the stock of the said Delaware Sugar House, or in lieu thereof the refinery, machinery, real estate, etc., belonging to the said company. And thereafter, in pursuance of the said unlawful and fraudulent contract, the said defendants did deliver all the stock of the said Delaware Sugar House to the said John E. Searles, Jr., and the said John E. Searles, Jr., did deliver to the said defendants a large amount of the capital stock of the American Sugar Refining Company, which amount is to your orator unknown.

9. Your orator is informed, avers and believes that in the carrying out of the said unlawful and fraudulent scheme and in the making of the said contracts the said defendant, John E. Searles, Jr., was acting for and in behalf of the said defendant, the American Sugar Refining Company, and that the said American Sugar Refining Company was the real party to the said contracts and received all the benefit of the same and paid the consideration thereof, and that the said contracts were made by the said American Sugar Refining Company and the other parties defendant herein named for the purpose of enabling it, the said American Sugar Refining Company, to control the manufacture and price of sugar in this district and to limit the production and enhance the | price of the (11)
same and to restrain the trade in the said commodity by and between the State of Pennsylvania and the other States of the United States and with foreign nations.

10. And your orator is informed, avers and believes that the said defendant, the American Sugar Refining Company, monopolizes the manufacture and sale of refined sugar in the United States, and is enabled to control at will the price of the said sugar, and does control and regulate the price of refined sugar in the United States; that it has limited the production and increased the price of said sugar, and to that end has stopped and dismantled many refineries throughout the United States. That the said contracts heretofore referred to were part and parcel of a fraudulent and unlawful scheme to enable the said company to obtain the control of the production and price of refined sugar, and were combinations in restraint of trade, and that in making said contracts the said John E. Searles, Jr., and the said American Sugar Refining Company combined and conspired with the said defendants, E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck and Claus Spreckels, to restrain the trade and commerce in refined sugar among the several States and with foreign nations. And that the said contracts so made and entered into as aforesaid by all of the defendants herein named were made with the intent to enable the said, The American Sugar Refining Company, to monopolize the manufacture and sale of refined sugar in Pennsylvania and among the several States of the United States; to increase the usual rate and prices at which refined sugar is sold; to prevent and counteract the effect of free competition at the prices of the same, and thereby to exact and procure

(12) large sums of money | from the citizens of Pennsylvania and from the citizens of the several States of the United States and from all others purchasing; and that the said contracts so made and entered into as aforesaid are unlawful and contrary to the said Act.

To the end therefore that your orator may obtain the equitable relief necessary and contemplated under the provisions of the said Act approved July 2d, 1890, and that an injunction be granted to enjoin and prohibit the said defendants from the violations of the said Act and that the said defendants may make full answer under oath to all the allegations herein, may it please your Honors to grant your orator a writ of subpœna to be directed to each of the said defendants, E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, Claus Spreckels, the American Sugar Refining Company, and John E. Searles, Jr., commanding them to be and to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises.

And your orator prays especially :—

1. That all and each of the said unlawful agreements made and entered into by and between the said defendants, on or about the fourth day of March, 1892, shall be delivered up, cancelled, and declared to be void;
(13) and that the said defendants, the Ameri- | can Sugar Refining Company and John E. Searles, Jr., be ordered to deliver to the other said defendants respectively the shares of stock received by them in performance of the said contracts; and that the other said defendants be ordered to deliver to the said defendants, the American Sugar Refining Company and John E. Searles, Jr., the shares of stock received by them respectively in performance of the said contracts.

2. That an injunction issue preliminary until the final determination of this cause, and perpetual thereafter, preventing and restraining the said defendands from the further performance of the terms and conditions of the said unlawful agreements.

3. That an injunction may issue preventing and restraining the said defendants from further and continued violations of the said Act of Congress, approved July 2d, 1890.

4. Such other and further relief as equity and justice may require in the premises.

And he will ever pray.

ELLERY P. INGHAM,
United States Attorney.

May 2d, 1892.

Ellery P. Ingham, being duly sworn according to law, doth depose and say that he is the person named in the foregoing bill of complaint, and that the facts therein stated are true as he is informed and believes.

ELLERY P. INGHAM.

Sworn to and subscribed before me, this second day of May, A. D., 1892.

SAMUEL BELL,
United States Commissioner.

ROBERT RALSTON,
Assistant United States Attorney.

ELLERY P. INGHAM,
United States Attorney,
For Complainant.

Endorsed. (14)

No. 38. April Sessions, 1892. In the Circuit Court of the United States, for the Eastern District of Pennsylvania. In Equity. Between The United States of America, Complainant, and E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of business in the city of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York, Defendants.

ROBERT RALSTON,
Assistant United States Attorney.

ELLERY P. INGHAM,
United States Attorney,
For Complainant.

Filed May 2d, 1892.

(15) UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

UNITED STATES OF AMERICA

against

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the Laws of Pennsylvania, and having their principal places of business in the City of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck,
(16) citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey and having its principal place of business in the City of Jersey City in the said State, and John E. Searles, Jr., a citizen of the State of New York.

Answer of John E. Searles, Jr.

The defendant John E. Searles, Jr., answers the bill of complaint of the United States of America by Ellery P. Ingham, its attorney:

I. The American Sugar Refining Company was incorporated under and by virtue of the provisions of the Act of the Legislature of New Jersey entitled "An Act concerning corporations," approved April 7th, 1875, and several supplements thereof and amendments thereto. By such act and its supplements and amendments it is, among other things, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, and may have one or more offices and places of business out of that State, and may hold, purchase and convey real or personal property out of that State, the same as if such real or personal property were situated in the State of New Jersey. By such acts and the supplements thereto and amendments thereof it is further provided that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials or other property necessary for their business, and issue stock to the amount of the value therof in payment therefor.

II. The said E. C. Knight Company, Franklin Sugar Refining Com- (17)
pany, Spreckels Sugar Refining Company and Delaware Sugar House owned manufacturing property and materials, that is to say, sugar refineries and other property necessary for their business and for the business of The American Sugar Refining Company. By law in the State of Pennsylvania, a corporation created by and under the laws of another State may, as this defendant is advised and believes, purchase and own the capital stock of a corporation created by and under the laws of the State of Pennsylvania.

III. Under the authority thus conferred upon the American Sugar Refining Company, its directors did, at different times before and after March 4th, 1892, and by transactions wholly distinct and separate one from the other, purchase from the holders thereof the capital stock of the said The E. C. Knight Company, The Franklin Sugar Refining Company, The Spreckels Sugar Refining Company and the Delaware Sugar House; and in payment therefor did issue stock of the American Sugar Refining Company to the amount of the value thereof, all of which, as this defendant is advised and believes, was in accordance with the laws of the State of New Jersey and of the State of Pennsylvania and was not in violation of the said Act of Congress or of any other provision of law.

IV. This defendant denies that the defendants have violated the provisions of the said Act of Congress entitled "An Act to protect trade "and commerce against unlawful restraint and monopolies."

V. On and prior to March 4th, 1892, The American Sugar Refining Company had acquired and it owned, controlled and operated sugar refineries in the States of New Jersey, New York, Massachusetts, Missouri, Louisiana and California. It was the owner of the capital stock of a sugar refining | corporation in Maryland. It had the control of the (18)
sugar refineries of which it was the owner. It did not own or control all the sugar refineries in the United States with the exception of the Revere Sugar Refining Company, of Boston, Massachusetts, and the said four Philadelphia refineries.

Its object in the acquisition of the stock of the four Philadelphia refineries was to enlarge its business, to reduce and economize expenses, and to increase the amount of sugar to be made and sold. It expected to obtain a fair price for the sugar which it should make and sell. It was and is impossible for this defendant to obtain complete control of the production and price of refined sugar in the United States, or to monopolize the manufacture and sale of refined sugar in the United States, or to control at will the price of sugar. It has never expected or attempted to do so. This defendant denies that there ever was the unlawful and fraudulent scheme which the bill of complaint asserts, or that The American Sugar Refining Company, either through this defendant, or at all, or that this defendant entered into any such contracts as the bill of complaint sets forth, except as hereinbefore stated; that is to say, that The American Sugar Refining Company did purchase the stock hereinbefore mentioned, and that this defendant, who is an officer of The American Sugar Refining Company, participated in making the purchase.

VI. This defendant denies that The American Sugar Refining Company has had any purpose to limit the production of or to restrain the trade in sugar, either by and between the State of Pennsylvania and the other States of the United States and with foreign nations, or at all. He denies that it has limited the production of sugar. On the contrary, its object is to increase the production and to enlarge the trade in sugar, (19) both that made at the four | Philadelphia refineries and that made at the refineries which it owns.

So far as concerns the price of sugar, the object and purpose of The American Sugar Refining Company is to keep the price lower than that at which any other individual or corporation can refine sugar, a fair profit being allowed. The price always has varied and it does vary, according to the supply and demand. Since March 4th, 1892, the price has been higher than it was immediately previous; it has been less than it frequently was in the period prior to March 4th 1892.

The amount of sugar which is refined in the United States depends, as has been stated, upon the supply and demand, and that depends largely upon the season of the year. It has always been the practice in the United States at certain seasons of the year to increase production as against other seasons. This defendant denies that The American Sugar Refining Company has stopped and dismantled many refineries throughout the United States. It has not dismantled any refineries. The only refineries which have been stopped are that of the Spreckles Company, the stoppage of which was compelled by the destruction by fire of its cooperage establishment, which at the earliest possible moment was rebuilt, and the operation of the refinery resumed, and the E. C. Knight Refinery, a refinery manufacturing on a very small scale, which was stopped for repairs. With the large number of refineries owned by The American Sugar Refining Company and in which it is interested, it is more economical to stop refining in a particular refinery than to diminish refining in many refineries. But, so far as concerns the amount of sugar refined the fact is that, since the acquisition by The American Sugar Refining Company of the stock of the four Philadelphia refineries, the amount of sugar refined is much greater proportionately than during the preceding period.

VII. This defendant further alleges that there was no connection or (20) relation between the four several purchases of stock made by it as hereinbefore averred. Each was negotiated separately and wholly independently of the other. As this defendant is informed and believes, in neither case did the sellers at the time of the negotiation in that case know of the purchase or of the negotiation for the purchase of stock in either other case. There was no arrangement or agreement that either of the said four Philadelphia refineries should stop refining. On the contrary, each of the four Philadelphia companies has continued in the ownership of its refinery and, with the exceptions hereinbefore stated and explained, has continued to refine sugar. No arrangement preventing the sellers from continuing the business, or preventing them from entering into competition with The American Sugar Refining Company, was ever made or mentioned. The whole of the transaction in each case was the purchase by The American Sugar Refining Company of the stock of the particular corporation. As this defendant is informed and believes and repeats, the transactions do not, nor does either of them, violate the said Act of Congress.

As this defendant is advised and believes, if the said act can be so construed as to apply to the said transactions, it is in conflict with the Constitution of the United States and in violation of the rights secured by the Constitution both to the sellers and to the purchasers of the said stock, and is void and of no legal effect.

VIII. This defendant prays to be hence dismissed with his reasonable costs in this respect most wrongfully sustained, and he prays that he may be entitled to the same benefit of exceptions of law to which he would have been entitled if he had demurred or filed exceptions to the bill or to any part thereof.

JNO. E. SEARLES, Jr.

State of New York,
City and County of New York. } *ss.* (21)

Before me, the subscriber, a notary public of the State of New York, duly commissioned and sworn and authorized to adminster oaths in the City and County of New York, in the State of New York, at the City of New York, appeared John E. Searles, Jr., with whom I am personally acquainted, who, being by me duly sworn, did depose and say that the facts set forth in the foregoing answer, so far as they are stated of knowledge, are true, and that the facts, so far as they are stated upon information and belief, are true to the best of the deponent's knowledge and belief.

Sworn to and subscribed
before me this 26th day } Jno. E. Searles, Jr.
of July, 1892.

[seal]

JNO. M. PERRY,
Notary Public,
Kings County.

Certificate filed in New York County.

(22) Endorsed: United States Circuit Court, Eastern District of Pennsylvania. In Equity. United States of America *vs.* E. C. Knight Company, *et al.* Answer of John E. Searles, Jr. Jno. E. Parsons, for Jno. E. Searles, Jr. Filed July 27, 1892. Samuel Bell, clerk.

(23) UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF PENNSYLVANIA.

In Equity.

United States of America,

vs.

E. C. Knight Company, Spreckels Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the Laws of Pennsylvania, and having their principal places of business in the City of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of (24) the State of Pennsyl- | vania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the City of Jersey City, in the said State, and John E. Searles, Jr., a citizen of the State of New York.

Answer of The American Sugar Refining Company.

I. The American Sugar Refining Company, a corporation created and existing by and under the laws of the State of New Jersey, answers the bill of complaint of the United States of America by Ellery P. Ingham, its attorney :

This defendant was incorporated under and by virtue of the provisions of the Act of the Legislature of New Jersey entitled "An Act concerning corporations," approved April 7th, 1875, and several supplements thereof and amendments thereto. By such act and its supplements and amendments it is, among other things, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, and may have one or more offices and places of business out of that State, and may hold, purchase and convey real or personal property out of that State, the same as if such real or personal property were situated in the State of New Jersey. By such acts and the supplements thereto and amendments thereof it is further provided that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials or other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor.

II. The said E. C. Knight Company, Franklin Sugar Refining Com- (25)
pany, Spreckels Sugar Refining Company and Delaware Sugar House owned manufacturing property and materials, that is to say, sugar refineries and other property necessary for their business and for the business of this defendant. By law in the State of Pennsylvania, a corporation created by and under the laws of another State, may, as this defendant is advised and believes, purchase and own the capital stock of a corporation created by and under the laws of the State of Pennsylvania.

III. Under the authority thus conferred upon the American Sugar Refining Company, its directors did, at different times before and after March 4th, 1892, and by transactions wholly distinct and separate one from the other, purchase from the holders thereof the capital stock of the said The E C. Knight Company, The Franklin Sugar Refining Company, The Spreckles Sugar Refining Company and the Delaware Sugar House; and in payment therefor did issue stock of the American Sugar Refining Company to the amount of the value thereof. all of which, as this defendant is advised and believes, was in accordance with the laws of the State of New Jersey and the State of Pennsylvania, and was not in violation of the said Act of Congress or of any other provision of law.

IV. This defendant denies that the defendants have violated the provisions of the said Act of Congress entitled "An Act to protect trade and commerce against unlawful restraint and monopolies."

V. On and prior to March 4th, 1892, this defendant had acquired and owned, controlled and operated sugar refineries in the States of New Jersey, New York, Massachusetts, Missouri, Louisiana and California. It was the owner of the capital stock of a sugar refining corporation in
Maryland. It had the control of the | sugar refineries of which it was (26)
the owner. It did not own or control all the sugar refineries in the United States with the exception of the Revere Sugar Refining Company of Boston, Massachusetts, and the said four Philadelphia refineries.

The object of this defendant in the acquisition of the stock of the four Philadelphia refineries was to enlarge its business, to reduce and economize expenses, and to increase the amount of sugar to be made and sold. It expected to obtain a fair price for the sugar which it should make and sell. It was and is impossible for this defendant to obtain complete control of the production and price of refined sugar in the United States, or to monopolize the manufacture and sale of refined sugar in the United States or to control at will the price of sugar. It has never expected or attempted to do so. This defendant denies that there ever was the unlawful and fraudulent scheme which the bill of complaint asserts, or that this defendant, either through the said John E. Searles, Jr., or at all, or that the said John E. Searles, Jr., entered into any such contracts as the bill of complaint sets forth, except as hereinbefore stated; that is to say, that this defendant did purchase the stock hereinbefore mentioned, and that the said John E. Searles, Jr., who is an officer of this defendant, participated in making the purchase.

VI. This defendant denies that it has had any purpose to limit the production of or to restrain the trade in sugar, either by and between the State of Pennsylvania and the other States of the United States and with foreign nations, or at all. It denies that it has limited the production of sugar. On the contrary, the object of this defendant is to increase the production and to enlarge the trade in sugar, both that made at the four Philadelphia refineries and that made at the refineries which this defendant owns.

(27) So far as concerns the price of sugar, the object and | purpose of this defendant is to keep the price lower than that at which any other individual or corporation can refine sugar, a fair profit being allowed. The price always has varied, and it does vary, according to the supply and demand. Since March 4th, 1892, the price has been higher than it was immediately previous; it has been less than it frequently was in the period prior to March 4th, 1892.

The amount of sugar which is refined in the United States depends, as has been stated, upon the supply and demand, and that depends largely upon the season of the year. It has always been the practice in the United States at certain seasons of the year to increase production as against other seasons. This defendant denies that it has stopped and dismantled many refineries throughout the United States. It has not dismantled any refineries. The only refineries which have been stopped are that of the Spreckels Company, the stoppage of which was compelled by the destruction by fire of its cooperage establishment, which at the earliest possible moment was rebuilt, and the operation of the refinery resumed, and the E. C. Knight Refinery, a refinery manufacturing on a very small scale, which was stopped for repairs. With the large number of refineries owned by this defendant, and in which it is interested, it is more economical to stop refining in a particular refinery than to diminish refining in many refineries. But, so far as concerns the amount of sugar refined, the fact is, that since the acquisition by this defendant of the stock of the four Philadelphia refineries, the amount of sugar refined is much greater proportionately than during the preceding period.

VII. This defendant further alleges that there was no connection or relation between the four several purchasers of stock made by it as hereinbefore averred. Each was negotiated separately and wholly independently of the other. As this defendant is informed and believes, in neither case did the sellers at the time of | the negotiation in that case know of (28) the purchase or of the negotiation for the purchase of stock in either other case. There was no arrangement or agreement that either of the said four Philadelphia refineries should stop running. On the contrary, each of the four Philadelphia companies has continued in the ownership of its refinery and, with the exceptions hereinbefore stated and explained, has continued to refine sugar. No arrangement preventing the sellers from continuing the business, or preventing them from entering into competition with this defendant, was ever made or mentioned. The whole of the transaction in this case was the purchase by this defendant of the stock of the particular corporation. As this defendant is informed and believes and repeats the transactions do not, nor does either of them, violate the said Act of Congress.

As this defendant is advised and believes, if the said act can be so construed as to apply to the said transactions, it is in conflict with the Constitution af the United States and in violation of the rights secured by the Constitution both to the sellers and to the purchasers of the said stock, and is void and of no legal effect.

VIII. This defendant prays to be hence dismissed with its reasonable costs in this respect most wrongfully sustained, and it prays that it may be entitled to the same benefit of exceptions of law to which it would have been entitled if it had demurred or filed exceptions to the bill or to any part thereof.

THE AMERICAN SUGAR REFINING COMPANY,
[L. S.] By JOHN E. SEARLES, JR.,
[SEAL] *Secretary and Treasurer.*

STATE OF NEW YORK, }
City and County of New York. } *ss.* (29)

Before me, the subscriber, a notary public of the State of New York, duly commissioned and sworn and authorized to administer oaths in the City and County of New York, in the State of New York, at the City of New York, appeared John E. Searles, Jr., with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he was the Secretary and Treasurer of the American Sugar Refining Company; that the facts set forth in the foregoing answer, so far as they are stated of knowledge, are true, and the facts, so far as they are stated upon information and belief, are true to the best of the deponent's knowledge and belief.

Sworn to and subscribed before me this twenty-sixth day of July, 1892.
[SEAL] JOHN E. SEARLES, JR.
JOHN M. PERRY,
Cert. filed in New York Co. *Notary Public*, (Kings Co.)

(30) Endorsed: United States Circuit Court, Eastern District of Pennsylvania, in Equity. United States of America, *vs.* E. C. Knight Company, *et al.* Answer of the American Sugar Refining Company. John E. Parsons, for American Sugar Refining Company. Filed July 27, 1892.

SAMUEL BELL,
Clerk.

(31) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 38. April Sessions, 1892.

Between

THE UNITED STATES OF AMERICA, *Complainant*,

and

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of business in the city of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels. Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; the American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York, *Defendants.*

(32) THE ANSWER OF THE DELAWARE SUGAR HOUSE TO THE BILL OF COMPLAINT OF THE ABOVED-NAMED COMPLAINANT.

1. This defendant admits that it is a corporation erected under the laws of the Commonwealth of Pennsylvania as set forth in paragraph 3 of the complainant's bill, but denies that it has been engaged in the manufacture of refined sugar for a longer period than ——— years.

2. This defendant denies that it made, at any time, any corporate contract with John E. Searles, Jr., or with any other person or persons or

corporation, for the sale of its real estate, machinery, or property of any kind, or that it at any time entered into any contract, scheme, combination, conspiracy, or transaction whatever as set forth in the said bill of complaint.

THE DELAWARE SUGAR HOUSE,
By J. VAUGHAN MERRICK,
President.

SAMUEL WAGNER,
FOR DELAWARE SUGAR HOUSE.

STATE OF PENNSYLVANIA, }
CITY OF PHILADELPHIA, } *ss.*

J. Vaughan Merrick, being duly affirmed, deposes and says: I was President of the Delaware Sugar House on the twenty-first day of March, 1892, and for several years prior to that date. The facts set forth in the foregoing answer are true to the best of my hnowledge.

J. VAUGHAN MERRICK.

Affirmed and subscribed to before me, this twenty-eighth day of June, A. D. 1892.

[SEAL]

CHAS. H. SAYRE,
Notary Public.

Endorsed: In the Circuit Court of the U. S. In Equity. No. 38, April Sessions, 1892. Between the United States of America and E. C. Knight Company, *et al.* Answer of Delaware Sugar House. Filed Aug. 1, 1892. Samuel Bell, Clerk. Samuel Wagner. (33)

(34) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 38. April Sessions, 1892.

Between

THE UNITED STATES OF AMERICA,
Complainant,

and

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of business in the City of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughan Merrick, W. H. Merrick, John E. Cope, John Birckbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; the American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the City of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York,
Defendants.

(35) THE ANSWER OF THE ABOVE NAMED J. VAUGHAN MERRICK TO THE BILL OF COMPLAINT OF THE ABOVE-NAMED COMPLAINANT.

In answer to the said bill, I, J. Vaughan Merrick, say as follows:

I admit that the Delaware Sugar House is a corporation erected under the laws of Pennsylvania, and that I was a holder of stock therein. I admit that I contracted with John E. Searles, Jr., to exchange my stock in the Delaware Sugar House for stock in the American Sugar Refining Company, and that, in pursuance of such contract, I did made such exchange. I deny that such contract was unlawful or fraudulent, or part and parcel of a fraudulent and unlawful scheme to obtain the control of the production and price of refined sugar, or a combination in restraint of trade, or a conspiracy to restrain the trade and commerce in refined sugar among the several States and with foreign nations, or that said contract was contrary to the Act of Congress approved July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." The said contract and exchange formed a transaction simply between John E. Searles, Jr., and myself. I had no knowledge for whom the said John E. Searles, Jr., was acting, and I had no knowledge whatever of any contracts or transactions between him or the American Sugar Refining Company and any of the other defendants in this case, excepting that I know that my brother, William H. Merrick, made a similiar contract and exchange with the said John E. Searles, Jr., and my knowledge of this was derived from the fact that the said William H. Merrick was in California for his health during the winter and spring of the year 1892, and, at his request, I acted for him in his absence.

J. VAUGHAN MERRICK.

SAMUEL WAGNER,
For J. Vaughan Merrick.

STATE OF PENNSYLVANIA,
CITY AND COUNTY OF PHILADELPHIA, } *ss.* (36)

J. Vaughan Merrick, being duly affirmed, deposes and says: I am one of the above-named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

J. VAUGHAN MERRICK.

Affirmed to before me, this twenty-eighth day of June, A. D. 1892.

CHAS. H. SAYRE,
[SEAL] *Notary Public.*

Endorsed: In the Circuit Court of the United States. In Equity. (37) No. 38. April Sessions, 1892. Between the United States of America and E. C. Knight, *et al.* Answer of J. Vaughan Merrick.

Filed August 1st, 1892.

SAMUEL BELL,
Clerk.

SAMUEL WAGNER.

(38) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 38. April Sessions, 1892.

Between
THE UNITED STATES OF AMERICA,
Complainant,
and

E. C. KNIGHT COMPANY, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, all of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of business in the City of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughan Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; the American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York, Defendants.

(39) THE ANSWER OF THE ABOVE-NAMED WILLIAM H. MERRICK TO THE BILL OF COMPLAINT OF THE ABOVE-NAMED COMPLAINANT.

In answer to the said bill, I, William H. Merrick, say as follows:—

I admit that the Delaware Sugar House is a corporation erected under the laws of Pennsylvania, and that I was a holder of stock therein. I admit that I contracted with John E. Searles, Jr., to exchange my stock in the Delaware Sugar House for stock in the American Sugar Refining Company, and that, in pursuance of such contract, I did make such exchange. I deny that such contract was unlawful or fraudulent, or part and parcel of a fraudulent and unlawful scheme to obtain the control of the production and price of refined sugar, or a combination in restraint of trade, or a conspiracy to restrain the trade and commerce in refined sugar among the several States and with foreign nations, or that said contract was contrary to the Act of Congress approved July 2d, 1890, entitled " An Act to protect trade and commerce against unlawful restraints and monopolies." The said contract and exchange formed a transaction simply between John E. Searles. Jr., and myself. I had no knowledge for whom the said John E. Searles, Jr., was acting, and I had no knowledge whatever of any contracts or transactions between him or the American Sugar Refining Company and any of the other defendants in this case. I was in California for my health during the winter and spring of the year 1892, and the contract and exchange were made for me by my brother, J. Vaughan Merrick, who acted for me, at my request. in my absence, and who was the only person with whom I had any communication whatever on the subject.

W. H. MERRICK.

STATE OF PENNSYLVANIA, } ss. (40)
CITY AND COUNTY OF PHILADELPHIA, }

William H. Merrick, being duly affirmed, deposes and says: I am one of the above-named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

W. H. MERRICK.

Affirmed to before me, this first day of Jnly, A. D. 1892.

CHAS. H. SAYRE,
[SEAL] *Notary Public.*

Endorsed: In the Circuit Court of the United States. In Equity No. April Sessions, 1892. Between the United States of America and E. C. Knight Company, *et al.* Answer of William H. Merrick. Filed August 1, 1892. Samuel Bell, Clerk. Samuel Wagner. (41)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (42)

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
E. C. KNIGHT COMPANY *et al.*

April Sessions, 1892.
No. 38.

THE SEPARATE ANSWER OF E. C. KNIGHT COMPANY TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowl-

edge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress, approved July 2d, 1890, or that in any way we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are a Pennsylvania manufacturing corporation, and that we are not amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of ownership, or change of ownership, of the shares of our capital stock.

(43) 2. We admit that Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis and Edward Browning are citizens of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their places of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation filed on or about the 9th of January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the County of Hudson, in which the principal part of its business in said State is to be transacted, and that the principal place of business out of the said State is to be in the City of Brooklyn, County of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act, approved the 7th of April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey, and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing (44) materials | necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the fourth paragraph of

the bill concerning the incorporation of the E. C. Knight Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fifth, sixth and seventh paragraphs of the bill as to the incorporation and purposes of the Franklin Sugar Refining Company, the Spreckels Sugar Refining Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, our refinery was used by our lessees, E. C. Knight & Company, in the manufacture of refined sugar by said firm sold. We did not ourselves conduct said manufacture.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

The firm of E. C. Knight & Company, our lessees, did manufacture sugar, and did do all that was necessary to secure a market for their product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth day of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent (45) scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding all our capital stock, viz., Edward C. Knight, Edward C Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, and ourselves, for the sale by them, or by us, for valuable consideration, of all the shares of stock of our company, or in lieu thereof of the refinery, machinery, real estate, etc., belonging to us. Subsequently, prior to the filing of the present bill, this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of our company, and by the receipt by them of the purchase-money in the shape of preferred and common stock of the American Sugar Refining Company. We joined in said contract originally, in case it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but

(49) Endorsed: No. 38, April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company, *et al.* Separate answer of E. C. Knight Company. John G. Johnson, Solicitor for E. C. Knight Company. Filed August 1, 1892. Samuel Bell, Clerk.

(50) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE UNINED STATES OF AMERICA,
Complainant,
vs.
E. C. KNIGHT COMPANY, *et al.*

April Sessions, 1892.
No. 38.

THE SEPARATE ANSWER OF EDWARD C. KNIGHT, JR., THOMAS COCHRAN, FREDERICK D. LANGENHEIM, RICHARD E. CLAY, GEORGE FRANKLIN DAVIS AND EDWARD BROWNING TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not | (51) amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of any of the dealings set forth in the bill.

2. We admit that we are citizens of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," ap-

proved April 7, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the county of Hudson, in which the principal part of its business in said State is to be transacted; and that the principal place of business out of the said State is to be in the City of Brooklyn, county of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act approved the 7th April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company | owning, mining, manufacturing or purchasing materials (52) necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the fourth paragraph of the bill concerning the incorporation of the E. C. Knight Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fifth, sixth and seventh paragraphs of the bill, as to the incorporation and purposes of the Franklin Sugar Refining Company, the Spreckels Sugar Refining Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, the refinery owned by the E. C. Knight Company was used by its lessees, E. C. Knight & Company, in the manufacture of refined sugar by said firm sold. The corporation itself did not conduct said manufacture.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

The firm of E. C. Knight & Company, lessees of E. C. Knight Company, did manufacture sugar, and did do all that was necessary to secure a market for their product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the

second day of July, 1890. So far as we have information the said Amer-
(53) ican Sugar Refining Company did not, prior to the fourth day | of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information, there was no such scheme entered into.

We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding all the capital stock of E. C. Knight Company, viz.. Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenhoim, Richard E. Clay, George Franklin Davis, Edward Browning, and with said company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or in lieu thereof of the refinery, machinery, real estate, etc., belonging to it. Subsequently, prior to the filing of the present bill. this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase-money in the shape of preferred and common stock of the American Sugar Refining Company. Said E. C. Knight Company joined in said contract because it was necessary for it to do so, if it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the Spreckels Sugar Refining Company or by the stockholders thereof; by the Franklin Sugar Refining
(54) Company or by the stockholders | thereof; by the Delaware Sugar House or by the stockholders thereof, to the American Sugar Refining Company or to some person or persons, of shares of capital stock of said three last-named corporations. We had no knowledge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies or their stockhalders, or all, did enter into contracts with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely independently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies, or with any other sugar refining companies. They sold, as we are advised, they had a right to sell, shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in

pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made a contract of sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce; and that it is not within the jurisdiction of the United States.

We deny any knowledge of, or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reasons we have stated.

7. Concerning the averments of fact in the ninth paragraph of the (55) bill, we can only say that we have no knowledge, information or belief as to the purpose of John C. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations We believe that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for it to effectuate the same through any contract made with us or with our stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief, it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein, and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade. We deny that we made any contract with John E. Searles, Jr., or with any other persons, as part and parcel of any combination or conspiracy with him or with any other persons or corporations, to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract as averred in the tenth paragraph of the bill "with the intention to enable | the American Sugar (56)

"Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to prevent and counteract the effect of free competition at the "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing."

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver the said Act is unconstitutional.

We aver that we entered into no other contract saving the one we have stated, viz, to sell our shares of stock in the E. C. Knight Company for a satisfactory price, with the intent to obtain such price, and with no other intent.

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

EDWARD BROWNING.

JOHN G. JOHNSON,
Solicitor.

Before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, personally appeared Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. (57) Clay, George Franklin Davis | and Edward Browning, who, being duly sworn, depose and say that the facts set forth in the foregoing answer as far as they are stated as of their own knowledge are true, and that the facts so far as they are stated upon the information of others are true to the best of their knowledge and belief.

EDWARD BROWNING.

Sworn and subscribed before me, this 1st day of August, 1992.

[SEAL]

GEORGE BLAESE,
Notary Public.

(58) Endorsed: No. 39. April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company, *et al.* Separate answer of Edward Browning. John G. Johnson, Solicitor for above Respondents. Filed August 1, 1892. Samuel Bell, clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (59)

In Equity.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
E. C. KNIGHT COMPANY, *et al.*

April Sessions, 1892,
No. 38.

THE SEPARATE ANSWER OF EDWARD C. KNIGHT, JR., THOMAS COCHRAN, FREDERICK D. LANGENHEIM, RICHARD E. CLAY, GEORGE FRANKLIN DAVIS AND EDWARD BROWNING TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that the said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2d, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not | amenable to the jurisdiction of the United States, or to punishment by (60) its laws, by reason of any of the dealings set forth in the bill.

2. We admit that we are citizens of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the county of Hudson, in which the principal part of its business in said State is to be transacted; and that the prin-

cipal place of business out of the said State is to be in the City of Brooklyn, County of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act approved the 7th April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or (61) the stock of any company | owning, mining, manufacturing or purchasing materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the fourth paragraph of the bill concerning the incorporation of the E. C. Knight Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fifth, sixth and seventh paragraphs of the bill, as to the incorporation and purposes of the Franklin Sugar Refining Company, the Spreckels' Sugar Refining Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, the refinery owned by the E. C. Knight Company was used by its lessees, E. C. Knight & Company, in the manufacture of refined sugar by said firm sold. The corporation itself did not conduct said manufacture.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

The firm of E. C. Knight & Company, lessees of said E. C. Knight Company, did manufacture sugar, and did do all that was necessary to secure a market for their product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day of July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth (62) day | of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding all the capital stock of E. C. Knight Company, viz., Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning and with said company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or in lieu thereof of the refinery, machinery, real estate, etc., belonging to it. Subsequently, prior to the filing of the present bill, this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase-money in the shape of preferred and common stock of the American Sugar Refining Company. Said E. C. Knight Company joined in said contract because it was necessary for it to to do so, if it should be determined by the purchaser to take a conveyance of the refinory, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the Spreckels Sugar Refining Company or by the stockholders thereof, by the Franklin Sugar Refining Company or by the stockholders | thereof, by the Delaware Sugar House (63) or by the stockholders thereof, to the American Sugar Refining Company, or to some person or persons, of shares of capital stock of said three last named corporations. We had no knowledge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all, did enter into contracts with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely independently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies, or with any other sugar refining companies. They sold, as we are advised, they had a right to sell, shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made a contract of sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce; and that it is not within the jurisdiction of the courts of the United States.

We deny any knowledge of, or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reasons we have stated.

(64) 7. Concerning the averments of fact in the ninth paragraph of the bill, we can only say that we have no knowledge, information or belief as to the purposes of John E. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations. We believe that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for it to effectuate the same through any contract made with us or with our stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein, and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade, we deny that we made any contract with John E. Searles, Jr., or with any other person, as part and parcel of any combination or conspiracy with him or with any other persons or corporations, to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into a contract as averred in the tenth paragraph of the bill "with the intention to enable | the American Sugar (65) "Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to prevent and counteract the effect of free competition at the "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing."

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then upon the advice of counsel, we aver that said Act is unconstitutional.

We aver that we entered into no other contract saving the one we have stated, viz., to sell our shares of stock in the E. C. Knight Company for a satisfactory price, with the intent to obtain such price, and with no other intent.

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

EDWARD C. KNIGHT, Jr.,
FREDERICK D. LANGENHEIM,
RICHARD E. CLAY,
GEORGE FRANKLIN DAVIS.

JOHN G. JOHNSON,
Solicitor.

Before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, personally appeared Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis | and Edward Browning, who, being duly sworn, (66) depose and say that the facts set forth in the foregoing answer so far as they are stated as of their own knowledge are true, and that the facts so far as they are stated upon the information of others, are true to the best of their knowledge and belief.

EDWARD C. KNIGHT, Jr.,
FREDERICK D. LANGENHEIM,
RICHARD E. CLAY,
GEORGE FRANKLIN DAVIS.

Affirmed to and subscribed before me, this twenty-ninth day of July, 1892.

GEORGE BLAESE,
Notary Public.

[SEAL]

Endorsed No. 38, April Sessions, 1892, in the Circuit Court of the (67) United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company, *et al.* Separate answer of Edward C. Knight, Jr., Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, and John G. Johnson, Solicitor for above respondents.

Filed August 1, 1892, Samuel Bell, Clerk.

(68) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
E. C. KNIGHT COMPANY, *et al.*

April Sessions, 1892.
No. 38.

THE SEPARATE ANSWER OF SPRECKELS SUGAR REFINING COMPANY TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2, 1890, or that in any way we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do.

We aver that we are a Pennsylvania manufacturing corporation, and (69) that we are not amenable to the jurisdiction of | the United States, or to punishment by its laws, by reason of ownership or change of ownership, of the shares of our corporate stock.

2. We admit that Claus Spreckels is a citizen of California, and that the remaining stockholders of our corporation, prior to the sale of their shares, were citizens of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation filed on or about the 9th January, 1891, declares its name to be the American Sugar Refining

Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the county of Hudson, in which the principal part of its business in said State is to be transacted; and that the principal place of business out of the said State is to be in the City of Brooklyn, county of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act, approved the 7th April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey, | and that the directors (70) of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the sixth paragraph of the bill concerning the incorporation of the Spreckels Sugar Refining Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fourth, fifth and seventh paragraphs of the bill as to the incorporation and purposes of the Franklin Sugar Refining Company, the E. C. Knight Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, our refinery was used by us in the manufacture of refined sugar.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

We did manufacture sugar and did do all that was necessary to secure a market for our product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day of July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth day of March, 1892, own or control all the sugar refineries in the | United (71) States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding the larger part of our capital stock, viz., Claus Spreckels, C. A. Spreckels, Louis Spreckels, Peter A. Smith and Charles Watson and ourselves for the sale by them, or by us, for a valuable consideration, of all the shares of stock of our company, or in lieu thereof of the refinery, machinery, real estate, etc., belonging to us. Subsequently, prior to the filing of the present bill, this contract was fully executed by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of our company, and by the receipt of the purchase-money, including preferred and common stock of the American Sugar Refining Company. We joined in said contract originally, in case it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which we had no concern, and in which we did not participate. The transaction eventuated in a sale by the owners of our capital stock of their shares thereof.

We know only by hearsay of sales by the E. C. Knight Company or by the stockholders thereof, by the Franklin Sugar Refining Company or by the stockholders thereof, by the Delaware Sugar House or by the stockholders thereof, to the American Sugar Refining Company, or to said person or persons, of shares of capital stock of said three last-named (72) corporations. We had no knowledge of such sales at | the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all, did enter into contracts with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely independently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies, or with any other sugar refining companies. They sold, as we are advised they had a right to sell, shares of stock to them belonging to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We joined in the contract for sale because we were conditionally offered a fair price for our refinery, machinery and real estate, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d, July, 1890; that it did not concern commerce, and that it is not within the jurisdiction of the courts of the United States.

We deny any knowledge of, or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reason we have stated.

7. Concerning the averments of fact in the ninth paragraph of the bill, we can only say that we have no knowledge, information or belief as to the purpose of John E. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property, or in agreeing to purchase the property of any other persons or corporations. We believe (73) that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for it to effectuate the same through any contract made with us or with our stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein, and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade. We deny that we made any contract with John E. Searles, Jr., or with any other person, as part and parcel of any combination or conspiracy with him or with any other persons or corporations to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract, as averred in the ninth paragraph of the bill, "with the intention to enable the American Sugar "Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to | prevent and counteract the effect of free competition at the (74) "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing."

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver that said Act is unconstitutional.

We aver that we entered into no other contract saving the one we have stated, viz., to sell our refinery, real estate, machinery, &c., for a satisfactory price, with the intention to obtain such price, and with no other intent. The contract we made, as we have said, was never consummated, because the purchaser took from our stockholders their shares of stock, and did not buy our refinery, real estate, machinery, &c.

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

SPRECKELS SUGAR REFINING COMPANY,
By Joseph A. Ball,
Vice President.

Seal of the Spreckels Sugar Refining Company.

Attest:
J. C. Uhler,
Secretary.

JOHN G. JOHNSON,
Solicitor.

(75) Endorsed: No. 38. April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company, *et al.* Separate answer of Spreckels Sugar Refining Company.

JOHN G. JOHNSON,
Solicitor for Spreckels Sugar Refining Company.

Filed August 1, 1892.

SAMUEL BELL,
Clerk.

(76) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
E. C. KNIGHT COMPANY, *et al.*

April Sessions, 1892.
No. 38.

THE SEPARATE ANSWER OF EDWARD C. KNIGHT, JR., THOMAS COCHRAN, FREDERICK D. LANGENHEIM, RICHARD E. CLAY, GEORGE FRANKLIN DAVIS AND EDWARD BROWNING TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2d, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not (77) amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of any of the dealings set forth in the bill.

2. We admit that we are citizens of Philadelphia, State of Pennsylvania. We have no knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the County of Hudson, in which the principal part of its business in said State is to be transacted; and that the principal place of business out of the said State is to be in the City of Brooklyn, county of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act approved the 7th day of April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company | owning, mining, manufacturing or purchasing (78) materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the fourth paragraph of the bill concerning the incorporation of the E. C. Knight Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fifth, sixth and seventh paragraphs of the bill, as to the incorporation and purposes of the Franklin Sugar Refining Company, the Spreckels Sugar Refining Company and the Delaware Sugar House as enables us to answer as the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, the refinery owned by the E. C. Knight Company was used by its lessees, E. C. Knight & Company, in the manufacture of refined sugar by said firm sold. The corporation itself did not conduct said manufacture.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

The firm of E. C. Knight & Company, lessees of said E. C. Knight Company, did manufacture sugar, and did do all that was necessary to secure a market for their product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company, prior to the fourth day of March, 1892, so far as we have information they were acquired prior to the 2d day of July, 1890, so far as we have information the said American Sugar Refining Company did not prior to the fourth day (79) | of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding all the capital stock of E. C. Knight Company, viz., Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, and with said company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or in lieu thereof of the refinery, machinery, real estate, etc., belonging to it. Subsequently, prior to the filing of the present bill, this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase-money in the shape of referred and common stock of the American Sugar Refining Company.

Said E. C. Knight Company joined in said contract because it was necessary for it to do so, if it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the Spreckels Sugar Refining Company or by the stockholders thereof; by the Franklin Sugar Refining Company or by the stockholders | thereof; by the Delaware Sugar House (80) or by the stockholders thereof, to the American Sugar Refining Company, or to some person or persons, of shares of capital stock of said three last-named corporations. We had no knowtedge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all, did enter into contracts with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely independently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies, or with any other sugar refining companies. They sold, as we are advised, they had a right to sell, shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made a contract of sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce; and that it is not within the jurisdiction of the Courts of the United States.

We deny any knowledge of, or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reasons we have stated.

7. Concerning the averments of fact in the ninth paragraph of the bill, (81) we can only say that we have no knowledge, information or belief as to the purposes of John E. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations. We believe that John

E. Searles, Jr., did act for, and in behalf of, The American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill. it was impossible for it to effectuate the same through any contract made with us or with our stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein, and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part ar parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade. We deny that we made any contract with John E. Searle, Jr., or with any other person, or part and parcel of any combination or conspiracy with him or with any other persons or corporations, to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract as averred in the tenth (82) paragraph of the bill, "with the intention to enable | the American Sugar Refining Company to monopolize the manufacture and sale of refined sugar in Pennsylvania and among the several States of the United States; to increase the usual rate and prices at which refined sugar is sold; to prevent and counteract the effect of free competition at the prices of the same, and thereby to exact and procure large sums of money from the citizens of Pennsylvania and from the citizens of the several States of the Union and from all others purchasing."

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver that said Act is unconstitutional.

We aver that we entered into no other contract saving the one we have stated, viz., to sell our shares of stock in the E. C. Knight Company for a satisfactory price with the intent to obtain such price and with no other intent.

8½. The shares standing in my name were only nominally my own. I had sold them to E. C. Knight, who was the real owner, before the contract with John E. Searles, Jr. I acted only as agent.

(This said addition made before signing. George Blaese.)

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

THOMAS COCHRAN.

JOHN G. JOHNSON,
Solicitor.

Before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, personally appeared Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis | and Edward Browning, who, being duly (83) sworn, depose and say that the facts set forth in the foregoing answer so far as they are stated as of their own knowledge are true, and that the facts so far as they are stated upon the information of others are true to the best of their knowledge and belief.

THOMAS COCHRAN.

Sworn to and subscribed before me, this thirtieth day of July, 1892.

GEORGE BLAESE,
[SEAL] *Notary Public.*

Endorsed: No. 38. April Sessions, 1892. In the Circuit Court of (84) the United States, for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company *et al.* Separate answer of Thomas Cochran.

JOHN G. JOHNSON,
Solicitor for above Respondents.

Filed August 3, 1892.

SAMUEL BELL,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES. (85)

IN EQUITY.

THE JOINT AND SEPARATE ANSWER OF CHARLES C. HARRISON, W. W. FRAZIER, ALFRED C. HARRISON, AND WILLIAM W. HARRISON, TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

The defendants answering say:

1. They deny that they or either of them have violated the provisions of the Act of Congress therein referred to. What they have done, which it is supposed is the ground for this statement in the bill, will be stated in answer to the particular averments of the bill.

They deny that the Franklin Sugar Refining Company has violated the said Act of Congress.

They have no knowledge or information in reference to the acts of the other defendants saving by hearsay, and they have heard nothing that leads them to believe that the other defendants have violated the said Act of Congress.

2 . The facts stated in the second paragraph of the bill are believed to be true.

3. The facts stated in the third paragraph are believed to be true saving that the capital of the American Sugar Refining Company is much larger than as there stated, and the complaint has omitted to state a
(86) clause of the charter of | the said company which the defendants are advised is material to the case, apparently intended to be made by the bill, viz, that the American Sugar Refining Company is by its charter expressly authorized to own shares in corporations of other States in the same manner as a private person can do.

4. These defendants have no knowledge, other than from rumor, of the facts stated in the fourth paragraph of the bill, and they pray that they may be proved if deemed material.

5. The facts stated in paragraph 5 are true.

6. These defendants have no knowledge other than from rumor of the facts stated in the sixth and seventh paragraphs of the bill, and they pray that they may be proved if deemed material.

7. The averments in the aighth paragraph of the bill are untrue.

It is true that the Franklin Sugar Refining Company was until February 6th, 1892, independently and as a competitor with the American Sugar Refining Company, engaged in the manufacture of sugar. On that day the American Sugar Refining Company purchased, as hereinafter stated, all the shares of stock of the Franklin Sugar Refining Company. They did not, nor did John E. Searles, Jr., purchase or agree to purchase the stock, machinery and real estate of the Franklin Sugar Refining Company or either of these descriptions of property of that company.

The defendants have never heard, nor do they believe that the American Sugar Refining Company or said Searles bought the property of the other of the four defendants named in this paragraph.

They have no knowledge, saving by rumor or hearsay, of the transaction or contract averred to have been made between John E. Searles, Jr., and Edward C, Knight and others in reference to the purchase and sale of shares in the E. C. Knight Company, and they pray that the same
(87) may be | proved if deemed material, and they make the same answer in reference to the transaction averred to have occurred between John E. Searles, Jr., and Claus Spreckels iu reference to the stock of the Spreckels Sugar refining Company.

Before either of these transactions by the bill alleged to have occurred, and before there was any contract expressed or understood between these parties as by the bill is alleged, viz.: on February 6th, a contract was made on behalf of the American Sugar Refining Company that that company would purchase all the stock of the Franklin Sugar Refining Company from the owners of said shares upon the consent of the stockholders of the purchasing company being obtained to the increase of capital necessary for the purpose, and this was done and the contract was carried out.

There was no contract giving the alternative of the purchase of the refinery, real estate and machinery. Such a contract could not be made under the laws of Pennsylvania by any one aware of the law, and it was not made.

The averment that this was part of an unlawful and fraudulent scheme is denied. There was no connection between the purchase of the stock of the Franklin Sugar Refining Company and the transactions in reference to the other companies or other property mentioned in the bill. There was nothing conditioned either express or by inference or understanding in reference to the acts of the owners of shares in the other companies or of the American Sugar Refining Company in dealing with them.

Nor was there any agreement express or implied, nor was there any understanding that these defendants or any of them should abstain from engaging in the same business or should withdraw or abstain from competing with the American Sugar Refining Company.

Some of these defendants had, for a long time, been desirous of withdrawing from the business and of selling their stock, and finding a purchaser who offered an adequate price, they all agreed to sell and sold, and there had been previous negotiations with other persons for that end. There was no other contract or intention or design in the matter on their part than | to sell their stock and with it the business of refining (88) sugar of the Franklin Sugar Refining Company, and they are advised there is nothing that is a violation of the statute in this.

As respects the transaction in reference to the shares of the Delaware Sugar House, these defendants make the same answer as they have done with reference to the Spreckels Sugar Refining Company.

8. The defendants admit that the contract made with them, and the only one that was made, was made on behalf of the American Sugar Refining Company.

It is not true that the contract made by the defendants (there being but one that had any connection with the stock of the Franklin Sugar Refining Company, or with that company and the American Sugar Refining Company) was made by them for the purpose of enabling the American Sugar Refining Company to control the manufacture and price of sugar in this district, and to limit the production and enhance and price of the same, and to restrain the trade in the said commodity by the between Pennsylvania and other States of the United States and with foreign nations. The sole purpose and intent of these defendants was to withdraw from the business of refining and selling sugar, and they did this by selling their stock in the corporation organized for that purpose.

9. It is not true that the contract made by these defendants was part or parcel of a scheme to enable the American Sugar Refining Company to obain the control of the production and price of refined sugar. It is utterly untrue that it was a combination in restraint of trade, and the defendants, while unable to comprehend how the transaction that did occur can be supposed to operate in that way, aver that there was no contract or combination or intention to restrain trade.

It is untrue that John E. Searles, Jr., or the American Sugar Refining Company combined or conspired with these defendants, or with any of them, to restrain the trade and commerce in refined sugar among the several States or with foreign nations.

(89) It is untrue that the contract of the defendants was made by them with intent to enable the American Sugar Refining Company to monopolize the manufacture and sale of refined sugar in Pennsylvania and among the several States of the United States, or to prevent and counteract the effect of free competition at the prices of the same and thereby to exact money from other persons. The intention of these defendants was to dispose of their stock at the price offered, and there was nothing said or done in the negotiation, nor was there any understanding when the bargain was made that could imply such an intention as is alleged in the bill. The contract was not conditioned on the making of a similar contract with any one else by or on behalf of the American Sugar Refining Company, nor was there any intention or expectation, express or implied, that these defendants would do or abstain from doing anything to enable the American Sugar Refining Company to monopolize the manufacture of refined sugar in Pennsylvania or among the several States, or to counteract the effect of free competition in respect of the prices of such sugar, or to enable the American Sugar Refining Company to exact money from other persons.

All which matters and things are true, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things they are ready and willing to aver, maintain, and prove as this Honorable Court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. C. HARRISON,
WM. W. HARRISON,
WM. W. FRAZIER,
A. C. HARRISON,
pp. C. C. HARRISON.

Charles C. Harrison and William W. Harrison, two of the above- (90)
named defendants, being severally duly sworn, depose and say that the facts stated in the foregoing answer of their own knowledge are true, and those stated upon information or belief they believe to be true.

CHAS. C. HARRISON.
WM. W. HARRISON.

Sworn to and subscribed before me, this fourth day of August, 1892.

[seal] JOHN RODGERS,
Notary Public.

Endorsed: 38, April, 1892. C. C. U. S. E. D. Pa. Eq. U. S. (91)
vs. E. C. Knight Co., and others. Answer of C. C. Harrison, W. W. Frazier, A. C. Harrison, W. W. Harrison. Filed August 5, 1892. Samuel Bell, Clerk. R. C. McMurtrie.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (92)

IN EQUITY.

THE SEPARATE ANSWER OF GEORGE H. FRAZIER TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA AGAINST THE E. C. KNIGHT COMPANY AND OTHERS.

This defendant knows nothing of the matters stated in the first paragraph of the bill, and has not been informed thereof saving by the bill.

The defendant admits the facts stated in the second paragraph of the bill.

The defendant admits that the American Sugar Refining Company is a corporation chartered under the laws of New Jersey, and that it is, directly or indirectly, engaged in the business of making sugar; as to the other matters alleged in the third paragraph he knows nothing, and has no information that will enable him to admit or deny the facts there stated.

The defendant has no knowledge or information that will enable him to admit or deny the facts stated in the fourth paragraph of the bill.

The facts stated in the fifth paragraph the defendant believes to be true.

The defendant has no knowledge or information that will enable him to admit or deny the facts stated in the sixth and seventh paragraphs of the bill.

This defendant is informed and believes that up to February 6, 1892,
the Franklin Sugar Refining Company conducted their business inde-
pendently of the American Sugar Refining Company, and as a competitor
with all other sugar refining companies. As respects all the other facts
stated in | the eighth and ninth paragraphs he has no knowledge and no (93)
information that will enable him to admit or deny them, saving in respect

of the allegation that for some purpose John E. Searles, Jr., entered into an unlawful and fraudulent scheme to purchase property of this defendant. This is absolutely untrue in every particular and in every aspect.

This defendant never entered into any contract with said Searles either for the sale of property or otherwise. Nor did he enter into any contract of any kind with any one in reference to the sale of an interest in the Franklin Sugar Refining Company or its property, nor did he sell or deliver any stock in that company to said Searles or to the American Sugar Refining Company, or to any one for them.

The defendant has no knowledge or information in respect of the facts stated in the tenth paragraph that enables him to admit or deny the same saving as respects himself, and as far as they relate to his being concerned in the contracts mentioned in the bill, or any of them, he says all the averments are untrue.

As respects the conduct or intentions of the American Sugar Refining Company in respect of the monopolizing the business of sugar refining and its capacity to control prices, he knows nothing, and he is advised that an expression of his opinion would be entirely impertinent by reason of the absence of all connection by him with the contracts that are the basis of the charges of the bill and of the relief sought. All which matters and things are true, without this that any other matter or thing in the bill averred and not herein well and sufficiently answered and confessed, avoided or denied is true, as this defendant will maintain and and prove, and he prays to be hence dismissed with costs.

GEORGE H. FRAZIER.

(94) George H. Frazier, being duly sworn, says that the facts stated in the foregoing answer of his own knowledge are true, and those stated upon information or belief he believes to be true.

GEORGE H. FRAZIER.

Sworn to and subscribed before me this 4th day of August, 1892.

JOHN RODGERS,
[SEAL.] *Notary Public.*

(95) Endorsed. 38, April. 1892, C. C. U. S., E. D. Pa., U. S., *vs.* E. C. Knight Co., and others. Answer of George H. Frazier.

Filed August 5, 1892, Samuel Bell, clerk. R. C. McMurtrie.

(96) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE ANSWER OF THE FRANKLIN SUGAR REFINING COMPANY TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

This defendant, answering, says that it has not violated the statute referred to in the bill.

It admits the facts stated in the second paragraph of the bill.

The facts stated in the third paragraph of the bill are true in part. The capital of the American Sugar Refinery is very much larger than is stated in the bill, and the clause in its charter under which its transactions relative to the stock of this company is sanctioned is omitted from the bill.

This defendant knows nothing of the facts stated in the fourth paragraph of the bill.

The defendant admits the statements in the fifth paragraph of the bill to be true.

The defendant knows nothing of the facts stated in the sixth and seventh paragraphs of the bill.

Until some time in February, 1892, the holders of the stock of this defendant were strangers to the holders of the stock of the American Sugar Refining Company. In that month the said company contracted to buy the stock of the Franklin Sugar Refining Company from the holders, and this was completed in March. Since that time the American Sugar Refining Company has owned all the stock of this company. This company was not a party to that contract

This defendant cannot state what was the proportionate production of the companies mentioned in the eighth paragraph | of the bill, nor its (97) own proportion of the entire output of sugar in the United States. The defendants were competitors with the American Sugar Refining Company and with the other companies mentioned in this paragraph in the business of refiners of sugar. As to the other facts stated in this paragraph the defendant knows nothing, saving as to the allegation of a scheme alleged to have been made by John E. Searles, Jr., to purchase certain property from C. C. Harrison, W. W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, and the Franklin Sugar Refining Company. No such contract as that alleged in the bill was made by those parties as the defendants believe, and certainly none with this defendant. The only contract that was made affecting this defendant in any respect was the purchase of the shares of the capital stock of the defendant company from the holders by the American Sugar Refining Company. To this contract this defendant was not a party.

This defendant knows nothing of the matters stated in the ninth paragraph of the bill.

This defendant has no information that will enable it to admit or deny that the American Sugar Refining Company monopolizes the manufacture of refined sugar in the United States, or that it is enabled to control at will the price of sugar, or that it does control and regulate it; nor is it informed as to what that company has done in respect to stopping or dismantling any refineries. As this company made no contract such as is averred in the bill, and knows of none made such as is averred, or of any contract saving the sale by the holders of its stock, it cannot admit or deny the averment as to the contracts being part and parcel of a fraudulent and unlawful scheme, but these defendants positively deny that they combined or conspired with the persons named in the tenth paragraph of the bill or with any one else to restrain the trade and commerce in refined sugar among the several States or with foreign nations or for any purpose whatsoever. As respects the contracts that are averred to have been made by the other parties to the bill, these defendants aver that they are utter strangers to said contracts, and as they (98) have not united in any of the | contracts mentioned in the bill they are advised that they are not called on to admit or deny the epithets applied to them by the bill or to form any opinion as to their legality or effect or of the motives of the parties to them, if such contracts were made.

All which matters and things are true, without this that any other matter or thing in the bill averred and not herein well and sufficiently answered, confessed, avoided, traversed, or denied is true as this defendant will maintain and prove, and they pray to be hence dismissed with costs.

In Witness Whereof, This defendant has hereunto set its corporate seal this eleventh day of August, 1892.

Attest:

The Franklin Sugar Refining Co.,
[SEAL] Per MITCHELL HARRISON,
Vice Pres't.

R. C. McMurtrie.
For the Defendants.

(99) Endorsed: 38, April, 1892. C. C. U. S E. D. Pa. In Eq. The United States *vs.* E. C. Knight Co., *et al.* Answer of Franklin Sugar Refining Co. Filed August 12, 1892. Samuel Bell, Clerk. McMurtrie.

(100) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

In Equity.

The United States of America,
Complainant,
vs.
E. C. Knight Company, *et al.*

April Sessions, 1892.
No. 38.

The Separate Answer of Claus Spreckels, C. A. Spreckels, Louis Spreckels, Peter A. Smith and Charles Watson to the above Complaint.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are

willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2d, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of any of the dealings set forth in the bill.

2. We admit that we are citizens of California, or of the City of (101) Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th of January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the County of Hudson, in which the principal part of its business in said State is to be transacted, and that the principal place of business out of the said State is to be in the City of Brooklyn, County of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act, approved the 7th of April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the sixth paragraph of (102) the bill concerning the incorporation of the Spreckels Sugar Refining Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fourth, fifth and seventh paragraphs of the bill as to the incorporation and purposes of the Franklin Sugar Refining Company, the

E. C. Knight Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, the refinery owned by Spreckels Sugar Refining Company was used by it in the manufacture of refined sugar.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

Said company did manufacture sugar, and did do all that was necessary to secure a market for its product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day of July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth day of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston. and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

(103) We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding the larger part of our capital stock, viz., ourselves and with the Spreckels Sugar Refining Company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or, in lieu thereof, of the refinery, machinery, real estate, &c., belonging to it. Subsequently, prior to the filing of the present bill, this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase-money, including preferred and common stock of the American Sugar Refining Company. Said Spreckels Sugar Refining Company joined in said contract because it was necessary for it to do so, if it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, &c. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the E. C. Knight Company or by the stockholders thereof, by the Franklin Sugar Refining Company or by the stockholders thereof, by the Delaware Sugar House or by the stockholders thereof, to the American Sugar Refining Company, or to some person or persons, of shares of capital stock of said three last-named corporations. We had no knowledge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all, did enter into this contract with John E. Searles, Jr., or with the American Sugar Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely inde | pendently of, and without concert, combination or (104) collusion with, the stockholders of other sugar refining companies, or with any other sugar refining company. They sold, as we are advised they had a right to sell, shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made said contract of sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce, and that it is not within the jurisdiction of the Courts of the United States.

We deny any knowledge of, participation in, or any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reason we have stated.

7. Concerning the averments of fact in the ninth paragraph of the bill, we can only say that we have no knowledge, information or belief as to the purposes of John E. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations. We believe that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for it to effectuate the same through any | contract made with us or with our (105) stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the

manufacture or sales of refined sugar in the United States, and that it has not limited the production of sugar therein; and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose ef restraining trade. We deny that we made any contract with John E. Searles, Jr., or with any other person, as part and parcel of any combination or conspiracy with him or with any other persons or corporations to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract, as averred in the tenth paragraph of the bill, "with the intention to enable the American Sugar "Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to prevent and counteract the effect of free competition at the "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing."

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver that said Act is unconstitutional.

(106) We aver that we entered into no other contract saving the one we have stated, viz., to sell our shares of stock in the Spreckels' Sugar Refining Company for a satisfactory price, with the intent to obtain such price, and with no other intent.

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

CLAUS SPRECKELS,
C. A. SPRECKELS,
LOUIS SPRECKELS,
PETER A. SMITH,
CHARLES WATSON.

JOHN G. JOHNSON,
Solicitor.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO, } *ss.*

Before me, the subscriber, a Commissioner of the Commonwealth of Pennsylvania, in and for the City and County of San Francisco, State of California, personally appeared Peter A. Smith, who, being duly sworn, deposes and says that the facts set forth in the foregoing answer so far as they are stated as of his own knowledge are true, and that the facts so far as they are stated upon the information of others are true to the best of his knowledge and belief.

PETER A. SMITH.

Sworn to and subscribed before me, this eleventh day of August, 1892.

James L. King,
[SEAL] *Commissioner for the State of Pennsylvania,*
in San Francisco, California.

Endorsed: No. 38. April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company *et al.* Separate answer of Peter A. Smith. (107)

JOHN G. JOHNSON,
Solicitor for above Respondents.

Filed August 17, 1802.

SAMUEL BELL,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (108)

In Equity.

The United States of America.
Complainant,
vs.
E. C. Knight Company *et al.*

April Sessions, 1892.

No. 38.

The Separate Answer of Charles Watson to the above Complaint.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2d, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of any of its dealings set forth in the bill.

(109) 2. We admit that we are citizens of California, or of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same may be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the county of Hudson, in which the principal part of its business in said State is to be transacted, and that the principal place of business out of the said State is to be in the City of Brooklyn, county of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act, approved the 7th April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, and may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property was situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

(110) 4. We admit the truth of the facts averred in the sixth paragraph of the bill concerning the incorporation of the Spreckels Sugar Refining Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fourth, fifth and seventh paragraphs of the bill as to the incorporation and purposes of the Franklin Sugar Refining Company, the E. C. Knight Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably correct.

6. Until on or about the fourth day of March, 1892, the refinery owned by Spreckels Sugar Refining Company was used by it in the manufacture of refined sugar.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraphs of the bill.

Said company did manufacture sugar, and did do all that was necessary to secure a market for its product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day of July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth day of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

(111) We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding the larger part of our capital stock, viz., ourselves and with the Spreckels Sugar Refining Company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or, in lieu thereof, of the refinery, machinery, real estate, etc., belonging to it. Subsequently, prior to the filing of the present bill, this contract was fully executed. by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase-money, including preferred and common stock of the American Sugar Refining Company. Said Spreckels Sugar Refining Company joined in said contract because it was necessary for it to do so, if it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, etc. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the E. C Knight Company or by the stockholders thereof, by the Franklin Sugar Refining Company or by the stockholders thereof, by the Delaware Sugar House or the stockholders thereof, to the American Sugar Refining Company, or to some person or persons, of shares of capital stock of said three last-named corporations. We had no knowledge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all. did enter into this contract with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made (112) their contract entirely inde- | pendently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies. or with any other sugar refining company. They sold, as we are advised they had a right to sell. shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made said contract for sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce, and that it is not within the jurisdiction of the courts of the United States.

We deny any knowledge of, or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States to the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reason we have stated.

7. Concerning the averments of fact in the ninth paragraph of the bill, we can only say that we have no knowledge, information or belief as to the purposes of John E. Searles, Jr., or of the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations. We believe that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for (113) it to effectuate the same through any | contract made with us or with our stockholders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8 So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein; and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade. We deny that we made any contract with John E. Searles, Jr., or with any other person, as part and parcel of any combination or conspiracy with him or with any other persons or corporations to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract, as averred in the tenth paragraph of the bill, "with the intention to enable the American Sugar "Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to prevent and counteract the effect of free competition at the "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing "

We deny that the contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver that said Act is unconstitutional.

We aver that we entered into no other contract saving the one we (114) have stated, viz., to sell our shares of stock in the Spreckels Sugar Refining Company for a satisfactory price, with the intent to obtain such price, and with no other intent.

9. We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

CLAUS SPRECKELS,
C. A. SPRECKELS,
LOUIS SPRECKELS,
PETER A. SMITH.
CHARLES WATSON.

JOHN G. JOHNSON,
Solicitor.

Before me, the subscriber, a notary public of the Commonwealth of , personally appeared Charles Watson, who, being duly sworn, deposes and says that the facts set forth in the foregoing answer so far as they are stated as of their own knowledge are true, and that the facts so far as they are stated upon the information of others are true to the best of their knowledge and belief.

CHARLES WATSON.

Sworn to and subscribed before me, this sixteenth day of August, 1892.

CHAS. WATSON.

ROBT. M. HOOPER, [SEAL]
Vice Consul General, Paris.

(115) Endorsed: No. 38. April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. The United States of America *vs.* E. C. Knight Company *et al.* Separate answer of Charles Watson. Filed August 29, 1892. Samuel Bell, Clerk. John G. Johnson, Solicitor for above Respondents.

(116) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE UNITED STATES OF AMERICA, *Complainant.*
vs.
E. C. KNIGHT COMPANY *et al.*

April Sessions, 1892.
No. 38.

THE SEPARATE ANSWER OF CLAUS SPRECKELS, C. A. SPRECKELS, LOUIS SPRECKELS, PETER A. SMITH AND CHARLES WATSON TO THE ABOVE COMPLAINT.

1. We admit that Ellery P. Ingham is the United States Attorney for the Eastern District of Pennsylvania. Though we have no knowledge upon the subject or information, saving that conveyed by the bill, we are willing to admit that said United States Attorney did, on the eleventh day of April, 1892, receive instructions from the Attorney-General of the United States to institute the proceedings in equity now pending.

We deny that we have in any way violated the provisions of the Act of Congress approved July 2d, 1890, or that, in any way, we have entered into any illegal contract or combination, or that we have done anything which was not within our legal right to do. We aver that we are not amenable to the jurisdiction of the United States, or to punishment by its laws, by reason of any of the dealings set forth in the bill.

(117) 2. We admit that we are citizens of California, or of the City of Philadelphia, State of Pennsylvania. We do not have knowledge of the place of residence of the other parties, or of the other defendants named in the second paragraph. If their place of residence be material we pray that the same my be duly proven.

3. Upon information and belief, though we have no knowledge upon the subject, we admit that the American Sugar Refining Company is a corporation incorporated under the provisions of the Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto and amendatory thereof; that a certificate of incorporation, filed on or about the 9th January, 1891, declares its name to be The American Sugar Refining Company; that the place in New Jersey where its business is to be conducted is Jersey City, in the county of Hudson, in which the principal part of its business in said State is to be transacted, and that the principal place of business out of the said State is to be in the City of Brooklyn, county of Kings, in the State of New York. Upon like information and belief we admit that the other facts stated in the third paragraph of the bill to be contained in said certificate of incorporation are so contained.

Upon information and belief we aver that by said Act, approved the 7th April, 1875, and its supplements and amendments, it is, *inter alia*, provided that any company organized thereunder may carry on a part of its business out of the State of New Jersey, may have one or more places of business out of that State, and may hold, possess and convey real and personal property out of that State the same as if such real or personal property were situated in the State of New Jersey; and that the directors of any company incorporated thereunder may purchase mines, manufactories or other property necessary for their business, or the stock of any company owning, mining, manufacturing or purchasing materials necessary for their business, and may issue stock to the amount of the value thereof in payment therefor.

4. We admit the truth of the facts averred in the sixth paragragh of (118)
the bill concerning the incorporation of the Spreckels Sugar Refiining Company, and the purpose of such incorporation.

5. We do not have such knowledge or information concerning the facts averred in the fourth, fifth and seventh paragraphs of the bill as to the incorporation and purposes of the Franklin Sugar Refining Company, the E. C. Knight Company and the Delaware Sugar House as enables us to answer as to the same. The averments are probably corrrect.

6. Until on or about the fourth day of March, 1892, the refinery owned by Spreckels Sugar Refining Company was used by it in the manufacture of refined sugar.

We do not have sufficient knowledge to enable us to answer as to the proportion of the total product of refineries in the United States which was manufactured by the companies named in the first, second and eighth paragraph of the bill.

Said company did manufacture sugar, and did do all that was necessary to secure a market for its product in the United States. Some of this product was sold in States other than Pennsylvania.

We do not have sufficient knowledge or information to enable us to answer concerning the number of sugar refineries owned or controlled by the American Sugar Refining Company prior to the fourth day of March, 1892. So far as we have information they were acquired prior to the second day of July, 1890. So far as we have information the said American Sugar Refining Company did not, prior to the fourth day of March, 1892, own or control all the sugar refineries in the United States saving the Revere Sugar Refinery, of Boston, and the four refineries named in the bill, situate in the City of Philadelphia.

We have no knowledge or information of any unlawful or fraudulent scheme entered into by the American Sugar Refining Company to obtain complete control of the production and price of refined sugar in the United States. So far as we have any knowledge or information there was no such scheme entered into.

(119) We admit that on or about the fourth day of March, 1892, John E. Searles, Jr., did enter into a contract with the parties holding the larger part of our capital stock, viz., ourselves and with the Spreckels Sugar Refining Company, for the sale by it, or by us, for a valuable consideration, of all the shares of stock of said company, or, in lieu thereof, of the refinery, machinery, real estate, &c., belonging to it. Subsequently, prior to the filing of the present bill, this contract was fully executed, by the delivery to the vendee, by the individuals above named, of the shares of the capital stock of said company, and the receipt of the purchase money, including preferred and common stock of the American Sugar Refining Company. Said Spreckels Sugar Refining Company joined in said contract because it was necessary for it to do so, if it should be determined by the purchaser to take a conveyance of the refinery, machinery, real estate, &c. As it was subsequently determined by him that he would not take such conveyance, but that he would take an assignment of the shares of stock from the owners thereof, the consummation of the contract was one in which the company had no concern, and in which it did not participate. The transaction eventuated in a sale by the owners of our capital stock of their share of the holdings thereof.

We know only by hearsay of sales by the E. C. Knight Company or by the stockholders thereof, by the Franklin Sugar Refining Company or by the stockholders thereof, by the Delaware Sugar House or by the stockholders thereof, to the American Sugar Refining Company, or to some person or persons, of shares of capital stock of said three last-named corporations. We had no knowledge of such sales at the time they were made, nor at the time our contract was made. If the parties named in the bill, said three sugar refining companies, or their stockholders, or all, did enter into this contract with John E. Searles, Jr., or with the American Refining Company, they entered into the same without our knowledge, and without any concert or combination with us. So far as we have information, knowledge or belief our stockholders made their contract entirely inde- (120) | pendently of, and without concert, combination or collusion with, the stockholders of other sugar refining companies, or with any other sugar refining company. They sold, as we are advised they had a right to sell, shares of stock to them belonging, to a purchaser entitled to buy, because they obtained a fair price therefor, and not in pursuance of any combination or collusion with any other persons. We deny that we ever entered into any concert, collusion or combination of any sort or kind with any parties to do any of the acts set forth in the bill. We made said contract of sale because we were offered a fair price for our shares of stock, and for no other reason and with no other purpose.

We aver that our said contract was not within the provisions of the Act of Congress of 2d July, 1890; that it did not concern commerce, and that it is not within the jurisdiction of the United States.

We deny any knowledge of or participation in, any fraudulent or unlawful scheme with John E. Searles, Jr., or with the American Sugar Refining Company, or with any of the parties named in the bill.

We deny that we agreed to make sale of our property for the purpose of giving complete control of the price of refined sugar in the United States or the American Sugar Refining Company or to any other person. Our agreement to sell was made solely for the reason we have stated.

7. Concerning the averments of fact in the ninth paragraph of the bill, we can only say that we have no knowledge, information or belief as to the purposes of John E. Searles, Jr., or the American Sugar Refining Company, in agreeing to purchase our property or in agreeing to purchase the property of any other persons or corporations. We believe that John E. Searles, Jr., did act for, and in behalf of, the American Sugar Refining Company in the contract which he made with us and with our stockholders.

Even if the American Sugar Refining Company did entertain the purpose averred in the ninth paragraph of the bill, it was impossible for it
to effectuate the same through any | contract made with us or our stock- (121)
holders. The performance of such contract was not made dependent or conditional upon the success of the American Sugar Refining Company in purchasing other refineries in this district.

8. So far as we have knowledge, information or belief it is to the effect that the American Sugar Refining Company does not monopolize the manufacture or sale of refined sugar in the United States, and that it has not limited the production of sugar therein; and that it has not, certainly not since the second day of July, 1890, dismantled many refineries throughout the United States.

We deny that any contract was entered into by us as a part or parcel of a fraudulent or unlawful scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. We deny that we entered into any contract or combination for the purpose of restraining trade. We deny that we made any contract with John E. Searles, Jr., or with any other person, as part and parcel of any combination or conspiracy with him or with any other persons or corporations to restrain trade or commerce in refined sugar among the several States and with foreign nations. We deny all knowledge of the existence of any such combination or conspiracy.

We deny that we entered into any contract, as averred in the tenth paragraph of the bill, "with the intention to enable the American Sugar "Refining Company to monopolize the manufacture and sale of refined "sugar in Pennsylvania and among the several States of the United "States; to increase the usual rate and prices at which refined sugar is "sold; to prevent and counteract the effect of free competition at the "prices of the same, and thereby to exact and procure large sums of "money from the citizens of Pennsylvania and from the citizens of the "several States of the Union and from all others purchasing."

We deny that the Contract which we entered into was unlawful or was contrary to the Act of 2d July, 1890. If said contract was contrary to said Act, then, upon the advice of counsel, we aver that the said Act is unconstitutional.

(122) We aver that we entered into no other contract saving the one we have stated, viz., to sell our shares of stock in the Spreckels Sugar Refining Company for a satisfactory price, with the intent to obtain such price, and with no other intent.

9 We pray to be hence dismissed with our reasonable costs in this respect most wrongfully sustained, and we pray that we may be entitled to the same benefit of exceptions of law to which we would have been entitled if we had plead in bar, or had demurred to this bill or to any part thereof.

CLAUS SPRECKELS,
C. A. SPRECKELS,
LOUIS SPRECKELS,
PETER A. SMITH,
CHARLES WATSON.

JOHN G. JOHNSON,
Solicitor.

Before me, the subscriber, Commissioner of the Commonwealth of Pennsylvania, personally appeared Claus Spreckels, who, being duly sworn, deposes and says that the facts set forth in the foregoing answer so far as they are stated as of his own knowledge are true, and that the facts so far as they are stated upon the information of others are true to the best of his knowledge and belief.

CLAUS SPRECKELS,

Sworn to and subscribed before me this 26th day of August, 1892.

[SEAL.]

JAMES L. KING,
Commissioner for Pennsylvania,
in San Francisco, California.

(123) Endorsed: No. 38, April Sessions, 1892. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

The United States of America, *vs.* E. C. Knight Company, *et al.* Separate answer of Claus Spreckels.

Filed September 2, 1892.

JOHN G. JOHNSON,
Solicitor for above Respondents.

SAMUEL BELL,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES. (124)

IN EQUITY.

THE SEPARATE ANSWER OF MITCHELL HARRISON TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

This defendant answering, says:

1. They deny that they or either of them have violated the provisions of the Act of Congress therein referred to. What they have done, which it is supposed is the ground for this statement in the bill, will be stated in answer to the particular averments of the bill.

They deny that the Franklin Sugar Refining Company has violated the said Act of Congress.

They have no knowledge or information in reference to the acts of the other defendants saving by hearsay, and they have heard nothing that leads them to believe that the other defendants have violated the said Act of Congress.

2. The facts stated in the second paragraph of the bill are believed to be true.

3. The facts stated in the third paragraph are believed to be true saving that the capital of the American Sugar Refining Company is much larger than as there stated, and the complainant has omitted to state a clause of the charter of | the said company which the defendants (125) are advised in material to the case, apparently intended to be made by the bill, viz, that the American Sugar Refining Company is by its charter expressly authorized to own shares in corporations of other States in the same manner as a private person can do.

4. These defendants have no knowledge, other than from rumor, of the facts stated in the fourth paragraph of the bill, and they pray that they may be proved if deemed material.

5. The facts stated in paragraph 5 are true.

6. These defendants have no knowledge other than from rumor of the facts stated in the sixth and seventh paragraphs of the bill, and they may be proved if deemed material.

7. The averments in the eighth paragraph of the bill are untrue.

It is true that the Franklin Sugar Refining Company was until February 6, 1892, independently and as a competitor with the American Sugar Refining Company, engaged in the manufacture of sugar. On that day the American Sugar Refining Company purchased, as hereinafter stated, all the shares of stock of the Franklin Sugar Refining Company. They did not nor did John E. Searles, Jr., purchase or agree to purchase the stock, machinery, and real estate of the Franklin Sugar Refining Company or either of these descriptions of property of that company.

The defendants have never heard, nor do they believe, that the American Sugar Refining Company or said Searles bought the property of the other of the four defendants named in this paragraph.

They have no knowledge, saving by rumor or hearsay, of the transaction or contract averred to have been made between John E. Searles, Jr., and Edward C. Knight and others in reference to the purchase and sale of shares in the E. C. Knight Company, and they pray that this same (126) may be | proved if deemed material, and they make the same answer in reference to the transaction averred to have occurred between John E. Searles, Jr, and Claus Spreckels in reference to the stock of the Spreckels Sugar Refining Company.

Before either of these transactions by the bill alleged to have occurred, and before there was any contract expressed or understood between these parties as by the bill is alleged, viz, on February 6th, a contract was made on behalf of the American Sugar Refining Company that that company would purchase all the stock of the Franklin Sugar Refining Company from the owner of said shares upon the consent of the stockholders of the purchasing company being obtained to the increase of capital necessary for the purpose, and this was done and the contract was carried out.

There was no contract giving the alternative of the purchase of the refinery real estate and machinery. Such a contract could not be made under the laws of Pennsylvania by any one aware of the law, and it was not made.

The averment that this was part of an unlawful and fraudulent scheme is denied. There was no connection between the purchase of the stock of the Franklin Sugar Refining Company and the transactions in reference to the other companies or other property mentioned in the bill. There was nothing conditioned, either express or by inference or understanding, in reference to the acts of the owners of shares in the other companies or of the American Sugar Refining Company in dealing with them.

Nor was there any agreement express or implied, nor was there any understanding that these defendants or any of them should abstain from engaging in the same business or should withdraw or abstain from competing with the American Sugar Refining Company.

Some of these defendants had, for a long time, been desirous of withdrawing from the business and of selling their stock, and finding a purchaser who offered an adequate price, they all agreed to sell and sold, and there had been previous negotiations with other persons for that end. There was no other contract or intention or design in the matter on their part than | to sell their stock and with it the business of refining sugar (127) of the Franklin Sugar Refining Company, and they are advised there is nothing that is a violation of the statute in this.

As respects the transaction in reference to the shares of the Delaware Sugar House, these defendants make the same answer as they have done with reference to the Spreckels Sugar Refining Company.

8. The defendants admit that the contract made with them, and the only one that was made, was made on behalf of the American Sugar Refining Company.

It is not true that the contract made by the defendants (there being but one that had any connection with the stock of the Franklin Sugar Refining Company, or with that company and the American Sugar Refining Company) was made by them for the purpose of enabling the American Sugar Refining Company to control the manufacture and price of sugar in this district, and to limit the production and enhance the price of the same, and to restrain the trade in the said commodity by and between Pennsylvania and other States of the United States and with foreign nations. The sole purpose and intent of these defendants was to withdraw from the business of refining and selling sugar, and they did this by selling their stock in the corporation organized for that purpose.

9. It is not true that the contract made by these defendants was part or parcel of a scheme to enable the American Sugar Refining Company to obtain the control of the production and price of refined sugar. It is utterly untrue that it was a combination in restraint of trade, and the defendants, while unable to comprehend how the transaction that did occur can be supposed to operate in that way, aver that there was no contract or combination or intention to restrain trade.

It is untrue that John E. Searles, Jr , or the American Sugar Refining Company combined or conspired with these defendants, or with any of them, to restrain the trade and commerce in refined sugar among the several States or with foreign nations.

It is untrue that the contract of the defendants was made by them (128) with intent to enable the American Sugar Refining Company to monopolize the manufacture and sale of refined sugar in Pennsylvania and among the several States of the United States, or to prevent and counteract the effect of free competition at the prices of the same and thereby to exact money from other persons. The intention of these defendants was to dispose of their stock at the price offered, and there was nothing said or done in the negotiation, nor was there any understanding when the bargain was made that could imply such an intention as is alleged in the bill. The contract was not conditioned on the making of a similar contract with any one else by or on behalf of the American Sugar Refining Company, nor was there any intention or expectation, express or implied, that these defendants would do or abstain from doing anything to enable the American Sugar Refining Company to monopolize the manufacture of refined sugar in Pennsylvania or among the several States, or to counteract the effect of free competition in respect of the prices of such sugar, or to enable the American Sugar Refining Company to exact money from other persons.

All which matters and things are true, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things they are ready and willing to aver, maintain, and prove as this Honorable Court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(129) Mitchell Harrison, one of the above-named defendants, being duly sworn, deposes and says that the facts stated in the foregoing answer of his own knowledge are true, and those stated upon information or belief he believes to be true.

MITCHELL HARRISON.

Sworn to and subscribed before me, this 9th day of January, 1893.

[SEAL.] JOHN RODGERS.
Notary Public.

(130) Endorsed: 38, April, 1892. C. C. U. S. Equity. U. S. *vs.* E. C. Knight Company, *et al.* Answer of Mitchell Harrison. Filed January 17, 1893. Samuel Bell, Clerk. McMurtrie.

(131) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

UNITED STATES OF AMERICA,
vs.
E. C. KNIGHT COMPANY, *et al.*

April Sessions, 1892.
No. 38.

Replication to answers of Charles C. Harrison, W. W. Frazier, Alfred C. Harrison, W. H. Harrison, Spreckels Sugar Refining Company, E. C. Knight Company, E. C. Knight, Jr., Edward Browning, F. D. Langenheim, R. E. Clay, G. F. Davis, Thomas Cochran, John E. Searles, Jr., Delaware Sugar House, J. Vaughan Merrick, William H. Merrick, and the American Sugar Refining Company.

This repliant, saving and reserving to itself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said petition to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that or any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, | tra- (132) versed, or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this Honorable Court shall direct; and humbly prays, as in and by its said petition it hath already prayed.

(Signed) ELLERY P. INGHAM.
U. S. Attorney.

Endorsed: No. 38. April Sessions, 1892. U. S. C. C. Eastern District of Pennsylvania. United States of America, *vs.* E. C. Knight Company, *et al.* Replication to answer of Charles C. Harrison, *et al.* Filed August 11, 1892, Samuel Bell, Clerk.

(133)

UNITED STATES,
vs.
E. C. KNIGHT COMPANY, *et al.*

And now, to wit, October 13, 1892, the death of E. C. Knight is suggested on the record.

Also the death of John E. Cope and of John Birkbeck, defendants in above stated case, is suggested on the record, and this bill of the United States is dismissed as to them.

(Signed) ELLERY P. INGHAM,
U. S. Attorney.

Endorsed: No. 38. April Sessions, 1892. C. C. U. S. E. D. of Pa. United States *vs.* E. C. Knight Co. *et al.* Dismissal of bill as to E. C. Knight, John E. Cope and John Birkbeck and suggestion of their death of record. Filed October 14, 1892, Samuel Bell, Clerk.

(134)

UNITED STATES,
vs.
E. C. KNIGHT COMPANY, *et al.*

And now, to wit, October 13, 1892, it appearing by the answer of George H. Frazier that he is not a stockholder in the Franklin Sugar

Refining Company, this bill of the United States is dismissed as to him.

(Signed) **ELLERY P. INGHAM**
U. S. Attorney.

Endorsed: No. 38. April Sessions, 1892. C. C. U. S. E. D. of Pa. United States *vs.* E. C. Knight *et al.* Dismissal of bill as to Geo. H. Frazier. Filed Oct. 14, 1892. Samuel Bell, Clerk.

(135) UNITED STATES OF AMERICA, *vs.* E. C. KNIGHT COMPANY, *et al.* } U. S. C. C. Eastern District of Penna. 38 April, S. 1892.

And now, to wit, this 22d day of October, 1892, it is hereby agreed that Mitchell Harrison be made a party defendant in the above entitled cause with the same effect as if he had been originally joined in the bill and duly served with a copy thereof, and that an appearance for him will be entered and his answer to the bill filed within ten days from the date hereof. And that he may unite in and answer such as the one filed by Charles C. Harrison and W. W. Frazier, Alfred C. Harrison and William W. Harrison, and that this shall be deemed to have been filed and issue joined at the time the joint answer was filed and issue joined, and that the evidence already taken in the cause may be read as if the answer of Mitchell Harrison had been filed and issue joined before the appointment of the examiner.

Signed, R. C. McMURTRIE,
for Mr. Harrison.

ELLERY P. INGHAM,
U. S. Attorney.

Endorsed: 38, April Session, 1892. United States, *vs.* E. C. Knight Company, *et al.* Agreement to make Mitchell Harrison a party defendant.

Filed October 22, 1892.

SAMUEL BELL,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (136)

IN EQUITY.

Between

THE UNITED STATES OF AMERICA Complainant,

and

E. C. KNIGHT COMPANY, SPRECKELS SUGAR REFINING COMPANY, FRANKLIN SUGAR REFINING COMPANY, DELAWARE SUGAR HOUSE.

All of which said defendants are corporations incorporated under the laws of Pennsylvania, and having their principal places of business in the City of Philadelphia, in the said State; Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels. Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison, George H. Frazier, J. Vaughn Merrick, W. H. Merrick, John E. Cope, John Birkbeck, citizens of the State of Pennsylvania; Claus Spreckels, a citizen of the State of California; The American Sugar Refining Company, a corporation created under the laws of New Jersey, and having its principal place of business in the city of Jersey City, in the said State; and John E. Searles, Jr., a citizen of the State of New York, defendants.

Examiner's Report.

Filed October 27; 1893.

To the Honorable the Judges of the Circuit Court: (137)

The Examiner, to whom was referred the above entitled matter, upon bill, answer and replication, to take testimony therein,

Respectfully Reports:

That having duly qualified, he proceeded to the discharge of his duties as Examiner by calling a meeting for the purposes of his appointment at the office of the Attorney of the United States for the Eastern District of Pennsylvania (Room 35, Post Office Building, Philadelphia), on Thursday, October 6th, 1892, at 3.30 P. M., and at this meeting and eight subsequent meetings, held by successive adjournments on October 13th, 14th, and 27th, 1892, and January 10th and 18th, 1893, and February 1st and 8th, 1893, he was attended by the following counsel:

The Hon. Samuel L. Phillips, Ellery P. Ingham, Esq., United States Attorney, and Robert Ralston, Esq., Assistant United States Attorney, for the United States of America, complainant.

John G. Johnson, Esq., for the E. C. Knight Company, Spreckels' Sugar Refining Company, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, Peter A. Smith, Charles Watson and Claus Spreckels.

Richard C. McMurtrie, Esq., for the Franklin Sugar Refining Company, Charles C. Harrison, William W. Frazier, Alfred C. Harrison, William H. Harrison and George H. Frazier.

Samuel Wagner, Esq., for J. Vaughn Merrick, William H. Merrick, and the Delaware Sugar House.

John E. Parsons, Esq., for John E. Searles, Jr., and The American Sugar Refining Company.

The following were not represented by counsel: Louis Spreckels, John E. Cope and John Birkbeck.

(138) By consent of all parties the testimony was taken stenographically, and by further consent the signatures of the witnesses to their respective testimony were waived.

The Exhibits referred to in the testimony are fully and accurately copied in the appended report. By agreement of counsel the originals are not appended, in view of the fact that some of the Exhibits are documents of more than ordinary value.

The Examiner appends the testimony, in which will be found the dates and places of meeting, with the attendance of counsel and witnesses, copies of the Exhibits offered in evidence, and the oral testimony.

Upon the conclusion of the testimony for the United States, the Examiner was advised by the counsel for the respondents that they did not desire to offer any testimony.

The Examiner therefore files this his report.

All of which is respectfully submitted,

JAMES M. BECK,
Examiner.

(139)

UNITED STATES,
vs.
E. C. KNIGHT COMPANY, *et al.*

Circuit Court, U. S.,
E. D. of Penna.
April Sessions, 1892.
No. 38.

TESTIMONY TAKEN BEFORE THE EXAMINER.

Thursday, October 6, 1892, 3.30 P. M.

At the Office of the United States Attorney.

Present—James M. Beck, Esq., Examiner; Hon. Samuel F. Phillips, Ellery P. Ingham, Esq., and Robert Ralston, Esq.; Richard C.

McMurtrie, Esq., for the Franklin Sugar Refining Company, Charles C. Harrison, W. W. Frazier, Alfred C. Harrison, William H. Harrison and George H. Frazier; Samuel Wagner, Esq., for the Delaware Sugar House, J. Vaughn Merrick and William H. Merrick.

John G. Johnson, Esq., representing the E. C. Knight Company, The Spreckels Sugar Refining Company, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith and Charles Watson, sends word that he is engaged in the trial of a case in the Circuit Court, and will not be able to be present at this meeting, but that he will produce the contracts made between the American Sugar Refining Company and his clients, the parties above named.

The United States Attorney requests from the defendants, who are represented by counsel, production of the contracts made between John E. Searles, Jr., on behalf of the American | Sugar Refining Company, (140) with the Franklin Sugar Refining Company, the Delaware Sugar House, The Spreckels Sugar Refining Company and the E. C. Knight Company, for the purpose of offering the same in evidence.

Richard C. McMurtrie :—There has never been a contract such as is stated by the United States District Attorney. The Franklin Sugar Refining Company has never been party to any contract with Mr. Searles or with any sugar refining company. The paper that the District-Attorney evidently refers to is the one mentioned in the pleadings, which is a contract between some of the stockholders of the Franklin Sugar Refining Company and the American Sugar Refining Company. If the District Attorney desires the production of that paper it will be produced.

The United States Attorney states that the notice given to Mr. McMurtrie was to produce at this hearing any contracts made between any clients represented by him and the American Sugar Refining Company, or John E. Searles, Jr.; and he is requested to produce any such contract he may have.

Mr. McMurtrie produces the document, but states that inasmuch as it is of great value and cannot be parted with, he has had a copy made which may be compared with the original by the District-Attorney.

Mr. McMurtrie, in producing the agreement in writing between the American Sugar Refining Company and Charles C. Harrison, W. W. Frazier, Alfred C. Harrison and a person not made party to the bill, and admitting that there is no other agreement, written or otherwise, upon the subject of the bill and between the parties, says that there was on the 6th of February a verbal contract to the same effect in all particulars by the same sellers and by the same purchasers made by another agent of the American Sugar Refining Company, but conditional on the purchasers getting the consent requisite to increase their capital stock. It is, of course, admitted that this contract was superseded by the written contract now | produced, as all verbal contracts are by the execution of a written one. (141)

The contract is produced and offereed in evidence, and a copy thereof marked "James M. Beck, Exhibit A, October 6, 1892," is filed with the Examiner.

CONTRACT

OF THE AMERICAN SUGAR REFINING COMPANY, WITH CHARLES C. HARRISON, REPRESENTING THE STOCKHOLDERS OF THE FRANKLIN SUGAR REFINING COMPANY.

New York, March 10, 1892.

GENTLEMEN:—Having heretofore proposed to buy the refinery and all buildings, wharves and plant connected with the establishment of the Franklin Sugar Refining Company, of which you are owners of all the stock, in order that we might take the title as stockholders of the corporation which owns the property instead of directly as originally proposed, but not varying in substance the property intended to be sold and that intended not to be sold, the American Sugar Refining Company offers to purchase from you the entire capital stock of the Franklin Company for the sum of ten million dollars, payable in shares of the American Company at par, one-half common and one-half preferred. Provided that the consent which is required to authorize an increase in the capital of the American Company of twenty-five million dollars is obtained. This offer, subject to the above proviso, is to become a binding contract upon the acceptance of the same by Mr. Chas. C. Harrison in behalf of himself and his associates, owners of all the stock of the Franklin Sugar Refining Company, when the American Company will, with all reasonable despatch, proceed to complete the required consent for the increase of capital.

No property is intended to pass by this sale of shares for ten million dollars payable in shares other than real estate, plant and bone black.

(142) The title to the real property of the Franklin Company shall be marketable and clear of all encumbrances and liens. Included in this property is a wharf the title to which stands in the name of Wm. W. Frazier (the title to be transferred to the Franklin Company), and excluded from this sale is the title to the property south of Almond street and west of Swanson street, and two houses north of Bainbridge street, 618 Swanson street and 619 Penn street, standing in the name of the Franklin Company, which we understand to have been placed in the name of that Company by mistake.

The bone black that shall have been received at the refinery on the 5th of March, 1892, will pass as property of the Franklin Company to the American Company.

All running contracts connected with the business for the year 1892 or any part of it, such as those for coal, bone black, packages tight or slack, blood, hauling and all similar contracts for supplies, will be assumed and performed by the American Company, the sellers paying all liabilities under said contracts so far as the same shall have been executed by delivery or performance, and also paying wages and salaries up to the 5th March, instant, which is to be the day on which the transfer takes effect if this contract is completed, the account of stock having been taken on that day. There will also pass by the sale the lease of the City wharf at the foot of Almond street and the Philadelphia office of the Company at No. 101 south Front street. The American Company will also perform all existing contracts for 1892 for the sale of empty hogsheads, bags and packages or things of a similar nature, and the contract with C. A. Brinley for services. All contracts for future delivery of bone black, all merchandise and supplies on hand or contracted for for use in the refinery, such as raw sugar, will be performed and paid for by the American Company, the price of that on hand to be payable as of 5th March, 1892 at cost, and the price for future deliveries to be cost as required by contracts with the respective sellers. Refined sugar and sugar in the process of | manufacturing will be paid for on the (143 basis of the market value of refined sugar at the close of business on Saturday, March 5, 1892, when an account of stock was taken and the price will be payable as of that day; and all expenses, rents, insurance and taxes shall be apportioned as of that date.

All property of the Franklin Company not intended to pass by the sale of the shares shall be deemed to be the property of Mr. Harrison and his associates and shall be transferred to them by the Franklin Company immediately. Included in the property which is thus to pass to Mr. Harrison and his associates shall be all debts due the Franklin Company and all bills, notes, open accounts, bank and bankers' deposits and securities, and all books of accounts, records and the minute book of the Franklin Company, and a quantity of machinery intended for experimental purpose; these are to be retained by Mr. Harrison and his associates as their property.

Mr. Harrison and his associates shall pay and shall protect the Franklin Company against all the debts and liabilities of that Company down to 5th March, 1892. All debts and liabilities which shall be incurred by the Franklin Company from and after that date shall be paid by the American Company; and that Company shall protect Mr. Harrison and his associates from all liability by reason thereof.

Taxes on the real property of the Franklin Company for the year 1892 shall be apportioned between Mr. Harrison and his associates and the purchaser of the shares to the 5th March, 1892, as between vendor and vendee. Mr. Harrison and his associates will continue to transact the business of the Franklin Company, including works and office, for one month after the purchase money is payable, for account of the purchasers, and all the business from and after the 5th March will be conducted for account and at the risk of the purchasers. But until the purchase money is paid Mr. Harrison and his associates are to have the right to keep the | refinery fully supplied with all things requisite for the (144) fullest operation of the same and to continue the business of selling in their discretion. After the payment of the purchase money, the raw sugar will be supplied by the American Company on notice of the requirements by the managers of the Franklin Company and sales made as directed by the American Company, and all then existing contracts of sale made after that time will be filled by the American Company at the contract prices.

At any time after one year after the completion of this purchase by the payment of the purchase money, the American Company will upon thirty days written notice, from Mr. Harrison and his associates, or a majority of such of them as may then be living, dissolve the Franklin Company and surrender its present charter, and will secure the performance of this contract by stamping upon the certificates of the stock of the Franklin Company notice that the same are subject to this provision, so that Mr. Harrison and his associates can enforce this and the next stipulation of the contract there will also be given to Mr. Harrison and his associates a covenant by the American Company that all debts incurred by the Franklin Company, or obligations for which it may be liable, which debts and obligations shall be created or incurred after the acceptance of this proposal will be discharged and extinguished at any time upon request of Mr. Harrison and his associates or any of them representing a majority in interest of the sellers.

Until payment has been made to Mr. Harrison and his associates of the purchase money, all the property covered by this offer and the proprietorship of the same shall be and remain in them and they shall be at liberty to conduct its operations as though this agreement had not been made. All said operations in case of payment as herein provided, shall be at the risk and for account of the American Company.

(145) Within ten days after the consent to the increase of the capital stock of the American Company shall have been obtained, the purchase money which will be due as of the 5th March, 1892, will be paid by the American Company, and at the same time settlement of all other stipulations in this contract will be made and the amounts due to or by Mr. Harrison and his associates will be paid as if the sale had been completed on the 5th March, 1892.

If the American Company fail in obtaining the assent to the increase of capital hereinbefore provided for within thirty days from the time this offer becomes a contract, Mr. Harrison and his associates or a majority in interest of them who shall then be living, may terminate the same on thirty days written notice to the American Company unless before the time named in such notice the American Company has completed the payment of the ten million dollars in shares as above stated.

Whenever the American Company by this contract agrees that they will perform a contract that has been made by the Franklin Company it is intended that the American Company undertakes that the Franklin Company will perform the contract.

(Signed) THE AMERICAN SUGAR REF'G CO.,
By JNO. E. SEARLES, Jr., *Secretary*.

To Mr. CHAS. C. HARRISON and others.

10th March, 1892. We accept the above.

(Signed) CHAS. C. HARRISON,
For Self and Associates.

Any amount which shall be actually paid to F. C. Newhall, in case of breach of his contract with F. Co., shall be borne in equal shares by American Company and C. C. Harrison and his associates.

10th March, 1892.

(Signed) CHAS. C. HARRISON,
For Self and Associates.

(Signed) THE AMERICAN SUGAR REF. CO.,
By JNO. E. PARSONS.

The counsel present agree that the next meeting shall be held upon Thursday, October 13th, at 3.15 P. M., to be followed by a meeting upon Friday, the 14th, at 3.15 P. M. (146)

Thursday, October 13th, 1892, 4 P. M.

At the Office of the United States Attorney.

Present: James M. Beck, Esq., Examiner; Hon. Samuel F. Phillips; Ellery P. Ingham, Esq., and Robert Ralston, Esq., for the United States.

Richard C. McMurtrie, Esq., for the Franklin Sugar Refining Company, Charles C. Harrison, W. W. Frazier, Alfred C. Harrison, William H. Harrison and George H. Frazier.

Samuel Wagner, Esq., for the Delaware Sugar House, J. Vaughan Merrick and William H. Merrick.

John G. Johnson, Esq., representing the E. C. Knight Company, the Spreckels Sugar Refining Company, Edward C. Knight, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith and Charles Watson.

Mr. Johnson produces the contract between Edward C. Knight, Edward C. Knight, Jr. and John E. Searles, Jr., and says that he has not been able to hear from Mr. Spreckels yet, but that he has written to the American Sugar Refining Company to ask them to lend him their copy of the contract, which he hopes to get in a day or two; that Mr. Spreckels has been in California and all of the people who have charge of the contract are out of town.

Contract produced by Mr. Johnson, marked "Exhibit B, James M. Beck, October 13, 1892."

CONTRACT. (147)

OF JOHN E. SEARLES, JR., WITH E. C. KNIGHT AND E. C. KNIGHT, JR.

The undersigned Edward C. Knight and Edward C. Knight, Jr., being the sole owners of the entire capital stook of the E. C. Knight

Company, comprising the entire plant used by said Company and the firm of E. C. Knight & Co. in the carrying on of the business of sugar refining in the City of Philadelphia and comprising the property described in a general way as follows:

The two blocks of ground bounded by Delaware avenue, Bainbridge street, Penn street and South street, with the exception of that portion of block on Penn street and Bainbridge street, owned by the Franklin Sugar Refining Company, (but to include the lot on the corner of Penn street and South street not now owned by said Company, but to be purchased by them and delivered with the before named property) together with lot on Penn street running to Front street and two piers and the bulkhead connected with same opposite said property, together with all appurtenances inclnding whatever has been used in connection with, or as part of, the before named refinery, hereby agree in consideration of the sum of One Dollar to each of them in hand paid, to sell to John E. Searles, Jr., for account of whom it may concern all the above named property for the sum of two million and fifty thousand dollars in the stock of the American Sugar Refining Company, one-half common and one-half preferred, upon condition that the requisite assents to the twenty-five millions increase of the capital of the Company are obtained and upon the following terms and conditions.

1. The sale shall be consummated on or before March 31, at the option as to time of the purchaser if the assents are obtained, and if not, as soon thereafter as they are obtained.

(148) 2. The title to the real property shall be a good title in fee, free from all liens and encumbrances, except taxes of 1892.

3. With the sale shall be included all boneblack in use, trade marks and patent rights belonging to the said Company or said firm and used in connection with said refinery.

4. The sale shall be consummated either by a deed conveying the property or by a transfer of the stock of the E. C. Knight Company, or both, at the option of the purchaser; if by transfer of stock, the seller shall guarantee the buyer against all debts and liabilities of the Company and shall have the right to withdraw and retain all property not coming within the foregoing description.

5. It is a further condition of this sale that the purchaser shall also purchase at their cash value on the day of the consummation of the sale all raw and refined sugars, including sugars in process, and all new supplies such as barrels, new filter bags, fuel, etc., and shall assume all contracts of the said E. C. Knight Company or E. C. Knight & Company for raw sugars, barrels, boneblack and such other supplies as are contracted for delivery during the year 1892.

6. Mr. Searles for account as aforesaid, hereby agrees upon the foregoing conditions to make the said purchase. From the time that the

sale shall be consummated Messrs. Knight shall for thirty days continue if desired to carry on the business for account of the purchaser.

E. C. KNIGHT,
E. C. KNIGHT, Jr.,
JNO E. SEARLES, Jr.

PHILADELPHIA,
March 4, A. D. 1892.
J. M. B.

The United States District Attorney states that he will file in the clerk's office this day a paper which suggests the death of Edward C. Knight, John Birkbeck and John E. Cope, and dismisses the bill as to them Also a paper which dismisses the bill as to George H. Frazier, (149) after showing that he was not a stockholder in the Franklin Sugar Refining Company.

Mr. Wagner produces contract between J. Vaughn Merrick, W. H. Merrick and others, and John E. Searles, Jr., dated March 8th, 1892.

Contract marked "Exhibit C, James M. Beck, October 13, 1892."

CONTRACT

JOHN E. SEARLES, JR., WITH J. VAUGHN MERRICK AND OTHERS, STOCKHOLDERS IN THE DELAWARE SUGAR HOUSE.

The undersigned stockholders of the Delaware Sugar Refinery in consideration of the sum of One Dollar to each of them in hand paid, hereby agree with Jno. E. Searles, Jr., for account of whom it may concern, to exchange the number of shares of Delaware Sugar Refinery stock set opposite their respective names, for shares in The American Sugar Refinery Company, they to receive for each of said shares of the Delaware Sugar Refinery, (said shares being of the par value of One thousand Dollars each,) twenty-two and one-half shares of the stock of The American Sugar Refining Company, one-half each in Common and Preferred stock, the Stock of both Companies to be full paid and non-assessable upon the following terms and conditions :—

1. The said Delaware Sugar Refinery stock is guaranteed by the sellers to comprise the entire plant used by said Company in the carrying on of the business of sugar refining in the City of Philadelphia and comprising the property described in a general way as follows :—

The buildings and sheds and lot of ground bounded by Reed, Swanson and Meadow Sts. and the Penna. R. R. Co. yard, and all the machinery and apparatus contained therein, known as "The Delaware Sugar House," together with all appurtenances including whatever has been used in connection with, or as part of, the before named refinery.

2. The sale shall be consummated on or before March thirty-first, at (150) the option as to time of the purchaser, if the necessary assents of the Stockholders of the Delaware Sugar House are obtained, and if not, as soon thereafter as they are obtained.

3. The title to the real property shall be a good title in fee, free from all encumbrances, except a ground rent of Twelve hundred Dollars per annum which is to be assumed by the purchaser.

4. The sale shall include all boneblack, trade-marks and patent rights belonging to the said Company and used in connection with the said refinery.

5. The sellers shall guarantee the buyer against all debts and liabilities of the Company and shall have the right to withdraw and retain all property not coming within the foregoing description.

6. It is a further condition of this sale that the purchaser shall also purchase, at their cash value on the day of the consummation of the sale, all raw and refined sugars, including sugars in process, and all new supplies such as barrels, new filter bags, fuel, etc., and shall assume all contracts of the said Company for raw sugars, barrels, boneblack and such other supplies as are contracted for delivery during the year 1892; also a contract for the sale of empty bags for 1892 and 1893, and a lease of a lot West of Swanson street until July, 1893, at Two thousand Dollars per annum.

7. It is further agreed by the sellers that from the time that the sale shall be consummated, George R. Bunker shall for thirty days continue, if desired, to carry on the business for account of the purchaser.

8. Mr. Searles for account as aforesaid hereby agrees upon the foregoing conditions, to make the said exchange subject only to the condition
(151) that the requisite assents to the Twenty- | five Millions increase of the capital stock of The American Sugar Refining Company are obtained.

Dated Philadelphia,
March 8th, A.D. 1892.

J. Vaughn Merrick	35 shares
W. H. Merrick per J. V. Merrick, Atty	35 shares
The Philadelphia Trust, Safe Deposit and Insurance Company Trustees under Will Jno. E. Cope decd. W. L. Dubois, *Secy & Tr.*	30 shares
Helen T. Cope per J. V. Merrick	5 shares
Geo. R. Bunker	14 shares
S. Georgiana Crabb by Geo. R. Bunker	25 "
Cassiene G. Wilson by Geo. R. Bunker	12 "
Geo. R. Bunker guardian of Wilson Minors	11 "
Albert Bunker	4 "
Estate of John Birkbeck Herbert Worth, *Executor*	22 "

R. H. Howell	4 shares
Thos. A. Howell	4 "
F. H. Howell by T. A. Howell Atty	4 "
Henry B. Howell	1 "
Jas. H. Post	4 "

Accepted on conditions stated above.

JOHN E. SEARLES, Jr.

Counsel for the United States state that through the answer of George H. Frazier it appears that the stock was transferred | to him temporarily (152) by Mitchell Harrison, and suggests that Mitchell Harrison's name should be substituted on the record as a party defendant in the case, *vice* that of George H. Frazier, against whom the bill is dismissed.

William W. Frazier, sworn:

(Called by the Government as under cross-examination.)

By the District-Attorney:

Q. You reside in Philadelphia and are one of the defendants in this case?

A. I am not in Philadelphia proper; I reside in Montgomery County.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You were a stockholder in the Franklin Sugar Refining Company?

A. Yes, sir.

Q. What were your duties in connection with that company?

A. Manufacturer.

Q. You were engaged in superintending the manufacturing of the sugar?

A. Yes, sir; that was all.

Q. You did not sign the contract made by the stockholders of the Franklin Sugar Refining Company with John E. Searles, Jr., for the American Sugar Refining Company?

A. No, sir.

Q. When did you first obtain knowledge that a sale was to be made of the stock of the Franklin Sugar Refining Company to the American Sugar Refining Company?

A. During the spring; during the early spring of this year.

Q. Of 1892?

A. Yes, sir.

Q. From whom did you obtain that information?

A. From my brother and brother-in-law, Mr. Charles C. Harrison and Mr. W. W. Frazier.

Q. What was said to you by them with reference to the sale? (153)

A. I was simply asked whether I would consider such a thing, that the sale could be made, and that if I was willing the details would be left to them.

Q. Where was this conversation?

A. 101 South Front street, Front and Chestnut.

Q. At the refinery?

A. No; at the office.

Q. Who was present?

A. As far as I can remember Mr. Charles C. Harrison, Mr. Frazier, Mr. Mitchell Harrison and myself.

Q. What was said to you or by you, if you remember, with reference to the advantage of making a sale of this stock, if anything?

A. Well, it was a very good offer and we might never have such another offer.

Q. Did you at that time give your consent to the sale being made?

A. Yes, sir.

Q. And did the others present also agree?

A. Yes, sir; the rest of them agreed.

Q. Is that the only time that you had any conversation with reference to making this sale?

A. How do you mean by the only time?

Q. With any other members of your firm. You only spoke then once about it?

A. That was the first. The matter was brought up several times. The thing was not consummated.

Q. Not concluded?

A. Not at the very first meeting; no, sir.

Q. Fix as near as you can the date of that first conversation.

A. That would be a very hard matter for me to fix. The only way I can fix it, my brother was in Europe, brother Alfred; he came back, I (154) think, in April, and it was shortly, | probably about the 1st of April, I should think about that time, the 1st of April, or in March, as far as I can remember.

Q. Did you know the date that the sale was made? Do you remember the date that the sale was actually made to the American Sugar Refining Company?

A. No, sir; I do not.

Q. I think you are a little wrong in it. I think the sale was made in March. I do not wish to take any advantage of you at all, the 5th of March, was it not?

Mr. McMurtrie: The contract is dated the fifth of March.

Q. Do you remember the date of the first agreement that you made with the American Sugar Refining Company?

A. No, sir; I do not.

Q. Was it not as early as the 8th of February that that first agreement was made?

A. It might have been, but I cannot give you the date; cannot give you the exact date.

Q. How long before the sale was made did you have this conversation with your brother?

A. As far as I can remember, three or four weeks.

Q. Did you make more than one agreement for the sale of your stock, or was more than one agreement made for you for the sale of your stock?

A. I cannot answer that. As I said before, all the details of the arrangements were made by two persons.

By Mr. McMurtrie:

Q. Name them?

A. C. C. Harrison and W. W. Frazier.

By the District-Attorney:

Q. Did you know that you were to take certificates of the American Trust, or American Sugar Refining Company, in exchange for your stock in the Franklin Sugar Refining Company?

A. Partly so.

Q. Partly?

A. Yes, sir.

Q. What did you understand that you were to receive from the American Sugar Refining Company? (155)

A. A portion in certificates and a portion in cash.

Q. Will you state how that was divided? Have you any objection to stating what proportion of certificates and what proportion of money you were to receive?

A. About half and half.

Q. Did you know what was the value in the market of the sugar certificates at the time you made the sale?

A. No, sir.

Q. At the time you made the sale did not you inquire what the sugar certificates were worth?

A. No, sir.

Q. What was the selling value of the shares of your own company, the Franklin Sugar Refining Company? My idea is, what was the value of your own stock with reference to par, the Franklin Sugar Refining Company?

A. I suppose it was about $200.

Q. What were the shares worth; were they $50 shares or $100 shares?

A. $100.

Q. Before you made the sale did not you make any inquiry whatever from your brother, or from any other source, to obtain any knowledge as to the value of the sugar certificates?

A. No, sir; everything was left in their hands. I trusted entirely to them.

Q. Was anything said to you at any time with reference to a probable increase in the value of the sugar certificates?

A. No, sir.

Q. Before the fifth day of March, 1892, did you have any knowledge, direct or indirect, that the American Sugar Refining Company, through John E. Searles, or any other person representing that company, were negotiating for the purchase of the stock of the Spreckels Company, of the Knight Company, or the Delaware Sugar House?

(156) A. Before the 5th of March? As to the Knight and Dela- | ware I cannot say. If I remember rightly, I have understood they were negotiating for the Spreckels.

Q. You understood that at the time you were in consultation with your brother with reference to whether it was advisable for you to make a sale of your stock or not?

A. Know at that time.

Q. Before you did that, before you had that consultation?

A. Yes, sir.

Q. How long before you had that consultation did you know that they were negotiationg for the Spreckels stock?

A. I did not know at all; it was rumored; that is all I know about it.

Q. However, at that time you had reason to believe that they were negotiating for the Spreckels stock as well as for the stock of your own refining company?

A. Only by rumor of the Spreckels Refinery.

Q. Had not you at that time also heard rumors that they were in negotiation for the stock of the E. C. Knight Company?

A. No, sir.

Q. Or for the Delaware Sugar House?

A. No, sir.

Q. Had you never read in any of the public prints, or had any information in any way, that they were in negotiation for the purchase of the stock of the Knight Company?

A. It has been, of course, in the newspapers; seen it there, but going on for such a long time it began to get a little stale.

Q. Those rumors then had been in existence even as to the Knight Company and the Delaware Sugar House for a long time before you made the sale?

A. If I remember right.

Q. Do you know John E. Searles, Jr.?

A. Yes, sir.

Q. How long have you known him?

A. I have known him on and off for three or four years.

(157) Q. Did you ever have any conversation with him in regard to making this sale?

A. No, sir.

Q. Did you see him during the past winter?

A. No, sir.

Q. He was not in Philadelphia to your knowledge?

A. If he was I did not see him.

O. You say that you were in charge of the manufacturing proper of the Franklin Sugar Refining Company?

A. I was at the factory exclusively.

Q. Can you tell about what quantity of sugar your refinery produced—the annual production?

A. In raw material or refined?

Q. In refined?

A. We turned out daily about one million eight hundred thousand pounds of refined sugar.

Q. Daily?

A. Yes, sir.

Q. Your refinery was the largest refinery in the City of Philadelphia, was it not; one of the largest in the United States?

A. One of the largest. Spreckels' is as large; about the same capacity.

Q. Spreckels' Refinery, where?

A. In Philadelphia.

Q. Was their production equal to yours?

A. Yes, sir.

Q. What corporation or company engaged in the refining of sugar was your principal competitor?

A. Havermeyer & Elder Sugar Refining Company, Spreckels Refinery, all competitors.

Q. The question was, which was your principal competitor?

A. I should say——

Q. I have reference to the fact whether or not the American Sugar Refining Company, with its consolidated refineries, | was not your principal competitor in the markets of the United States? (158)

A. Yes, sir.

Q. Did you know at the time you were about to make this contract what refineries were operated by the American Sugar Refining Company?

A. No, sir.

Q. Can you state a portion of those that were operated?

A. Havermeyer Sugar Company, Mathiessen & Wieches, of Jersey City, Brooklyn Sugar Refining Company, and a refinery in Boston—the Standard, of Boston.

Q. Did they also operate some in the State of Maryland?

A. I believe not; not that I know of.

Q. What refineries in Philadelphia were actively competing with you for the sugar trade?

A. Spreckels Refinery, E. C. Knight & Co., and the Delaware.

Q. Those three companies in connection with your own were all of the sugar refining companies operating in the City of Philadelphia?

A. Yes, sir.

Q. At this meeting which you had with your brother and the other members of the Franklin Sugar Refining Company, did you direct your brother to make this sale on your behalf with the American Sugar Refining Company?

A. If they thought best; I left it entirely in their hands.

Q. At that time you left it with them if they thought the sale should be made to make it?

A. Entirely so.

Q. Gave them full authority as far as you were concerned?

A. To make all arrangements. I left it entirely in their hands.

Q. Since the sale of your stock to the American Sugar Refining Company did the American Sugar Refining Company take possession of the

(159) Franklin Sugar Refining Com- | pany, of the active operation and control of the Franklin Sugar Refining Company.

A. Yes, sir.

Q. Under that sale made with your consent?

A. Yes, sir.

Q. At what time did the American Company take possession of your refinery?

A. May 21st.

Q. May 21, 1892?

A. I am not good on dates.

Q. Since that time have you still been connected with the Franklin Sugar Refining Company?

A. Yes, sir.

Q. In what capacity have you been connected with it?

A I have charge of the whole establishment, both mechanical and the manufacturing of sugar, and also expect to have charge of the Spreckels.

By Mr. McMurtrie:

Q. You mean of the departments that you have mentioned, manufacturing and mechanical? I think you said you had charge of the whole establishment. Do you mean of the whole business or of the mechanical and manufacturing departments?

A. Of the mechanical and manufacturing part of the business.

By the District Attorney:

Q. Are you now under the direction of the American Sugar Refining Company?

A. Yes, sir.

Q. Are you paid by a salary or otherwise?

A. By a salary.

Q. Your salary is paid to you by the American Sugar Refining Company?

A. Yes, sir; it is paid by the Franklin, but, of course, it comes from the American Sugar Refining Company.

(160) Q. Paid by the Franklin but comes from the American?

A My salary comes down from the office. I made arrangements for so much a year with them. That check comes down from Front and Chestnut, although it is the Franklin Sugar Refinery check.

Q. But as a matter of fact the payment really is made by the American?

A. I suppose so.

Q. Was not that part of the arrangement that was originally made between you and the American Company, that you were to ba employed upon salary?

A. I was asked whether I would continue as I had been, and I said yes.

Q. Who asked you that question?

A. Mr. Theodore Havermeyer.

Q. That was before you authorized your brother to sell the stock?

A. No; that was afterwards; after the deal was made and they visited the refinery.

Q. Was anything said by you or to you with reference to your employment as superintendent at the time you had the talk with your brother and Mr. Frazier?

A. No, sir.

Q. The question of your future employment with the Franklin Company was not then considered?

A. No, sir. All that was said was some said they would like to go out of business and others did not. I had not made made up my mind whether I would remain in or not, or whether they would want me. I could not tell.

Q. Did you understand that you could remain in if you desired to do so?

A. No, sir.

Q. In pursuance to the agreement of sale you received a certain amount of stock of the American Sugar Refining Company?

A. Yes, sir.

Q. You are a stockholder of the American Sugar Refining Company? (161)

A. I hold their stock.

Q. Did you have any charge of the sales of sugar in Philadelphia?

A. No, sir.

Q. By whom is that conducted on behalf of the Franklin?

A. Mr. Mitchell Harrison.

Q. Have you any knowledge of an order or direction of the American Sugar Refining Company allowing a rebate to certain grocers or dealers in sugar?

A. Only indirectly; that is all.

Q. From whom did you obtain that knowledge?

A. From the papers, the newspapers, daily papers.

Q. When did you receive your stock from the American Sugar Refining Company?

A. Not so very long ago; about two or three weeks ago.

Q. When did you receive the cash payment that you were to receive upon it?

A. About the same time partly; it is only lately, only the last month or six weeks, that I received what was coming to me.

Q. Was there any delivery to you, either of stock or of money?

A. No, sir; it was in the hands of the trustees.

Q. Put it in the hands of trustees?

A. Yes, sir.

Q. Do you know when it was put in the hands of trustees?

A. No, sir; I cannot give you the date.

Q. What was the purpose of putting the stock in the hands of trustees?

A. I do not know. The trustees took care of the sale and they took care of the proceeds of the sale, to be turned over to the individuals afterwards.

(162) Q. Was the same agreement made with the other stock- | holders of the Franklin Company? So far as you know as with yourself?

A. Yes, sir.

Q. Each of you were to receive one-half in stock and one-half in cash?

A. About that.

Q. And there was no delivery to any of them either of stock or cash until within a recent time?

A. A recent date to me at least; I cannot say as to the rest; the stock was only divided lately.

Q. Who were the stockholders of the Franklin Sugar Refining Company prior to the sale?

A. C. C. Harrison, A. C. Harrison, myself, Mitchell Harrison and W. W. Frazier.

Q. Do you at the present time hold any stock of the Franklin Sugar Refining Company?

A. No. sir.

Q. Who are the officers of the Franklin Sugar Refining Company at the present time?

A. Myself, Mr. Mitchell Harrison—

Q. Name the directors.

A. W. W. Harrison, Mitchell Harrison, W. W. Frazier, Jr., and George H. Frazier.

Q. Those are the directors?

A. Those are the directors. W. W. Harrison, President; Mitchell Harrison, Vice-President; George H. Frazier, Secretary and Treasurer; and W. W. Frazier, Jr., Manager.

Q. Do you know who are the stockholders of the Franklin Sugar Refining Company? who hold the stock of the Franklin Sugar Refining Company at the present time?

A. No, I do not; I do not hold any.

Q. You do not hold any of it yourself?

A. No, sir.

Q. So far as you know the stock is all held by the American Sugar Refining Company, to whom you transferred it?

A. I suppose it is.

(163) Q. Did you make a transfer of your stock?

A. To the trustees.

Q. Who were the trustees?

A. C. C. Harrison and W. W. Frazier.

Q. When did you make a transfer of your stock to Messrs. Harrison and Frazier as trustees?

A. The latter part of May or June; either the latter part of May or in June; the exact date I cannot give you.

Q. How much stock of the American Sugar Refining Company was received for the total sale of the Franklin Sugar Refining Company?

A. I cannot give you those figures; I cannot give you the amount.

Q. Do you know how much money in addition to the stock was to be paid for all the stock of the Franklin Sugar Company?

A. $5,000.000.

Q. In money?

A. Yes, sir.

Q. Do you know how much in stock?

A. The total number of shares?

Q. How much stock of the American Sugar Refining Company was given for the total transfer of all the stock of the Franklin Sugar Refining Company?

A. As I said before, half to be given in money and half in stock.

Q. Then the stockholders of the Franklin Sugar Company received from the American Sugar Company $5,000,000 in stock of the American Company, and $5,000,000 in cash?

A. About that.

Q. Is that the way you understand it?

A. That is the way I understand it.

By Mr. Ralston.

Q. In your answer to this bill you state that you have never heard, nor do you believe that the American Sugar Refining Company or said Searles bought the property of all | the other four defendants named in this paragraph. Now, will you tell us what you mean by that? (164)

A. I shall have to refer you to my counsel for that.

Q. Now, why did you express your belief as to the contracts of the other defendants?

A. I have to refer you to my counsel again who drew up this answer.

Q. Did you know anything about the contracts of the other defendants?

A. No, sir.

Q. Had you ever seen those contracts?

A. No, sir.

Q, You knew nothing of those contracts whatever?

A. No. sir.

Q. When did you hear definitely that the American Sugar Refinery had made a contract with Spreckels?

A. I cannot answer that.

Q. Can you say whether it was in January or February?

A. It was very close on to the time that our contract was made.

Q. Your contract was originally made on February 6th, was it not?

A. About there

Q. Did you know before that that the American Refinery had made a contract with Spreckels?

A. No, sir.

Q. You did not know definitely?

A- No, sir.

Q. How soon after that did you know it?

A. Not for quite a while afterwards.

Q. Within a week?

A. Not until about the same time our own establishment was turned over.

Q. Do you mean by that that you did not know that until the twenty-first of May?

A. About that time.

(165) Q. Until the 21st of May?

A. That the Spreckels Refinery was sold also?

Q. Yes, sir.

A. Nothing definite, no.

Q. You did not know anything definite until the 21st of May?

A. I won't put it the 21st of May; about that time; as I said before, I am a very poor one about dates. There were so many rumors at that time.

Q. Let me call your attention to this: This written contract of yours is dated March 10th. You said a minute ago that you knew of this contract with Spreckels about the time your own refinery was sold, was turned over?

A. Yes, sir; that is what I said, about the time it was turned over.

Q. Do you mean to say that you did not know about that contract with Spreckels until the 21st of May?

A. About that time.

Q. You did not know it about the time this contract was made?

A. No, sir.

Q. When had you first heard of it?

A. I have been hearing of it a long time, all winter long.

Q. Did you see it in the papers that your refinery had been sold?

A. I saw it several times.

Q. Did you see it in the papers that other refineries had been sold at that time?

A. If I remember rightly, yes.

Q. Was that before this contract was made?

A. I could not answer that.

Q. You could not say?

A. No, sir.

Q. Did you ever see these other contracts that were made?

A. No, sir.

(166) By Mr. Johnson

Q. The corporation of Harrison & Frazier was only organized as such a few years ago, was it not, as a corporation?

A. Yes, sir.

Q. Before that it had been in business under what name?

A. First. Harrison, Havermeyer & Company, and then Harrison, Frazier & Company.

Q. And when it organized into a corporation it was a partnership that was practically a family partnership?

A. Exactly.

Q. And when it was organized who were the stockholders, your brother Charles—

A. Brother Alfred, brother Mitchell, brother-in-law Mr. Frazier and myself, a family concern.

Q. So it ran afterwards as a corporation whose shares were held by the family which had been in partnership before?

A. Yes, sir.

Q. In that concern, both family and corporation, your position was that of manufacturer?

A. Always had been.

Q. With the finances of the concern and financial matters generally have you had any experience whatever?

A. No, sir.

Q. You were the younger brother, your brother Charles was older and your brother-in-law was older?

A. Yes, sir; I was the youngest except brother Mitchell.

Q. As a manufacturer I suppose you were willing to continue in business and hold your shares of stock?

A. Yes, sir.

Q. With your brother and brother-in-law Frazier out did you care to be concerned longer in the running of the Franklin Sugar Refinery?

A. Only for occupation sake.

Q. I mean to take the responsibility of your large investment in that concern as a shareholder if those two went out; did you care to do it?

A. No, sir.

Q. Were you willing or not, therefore, in the matter of selling your (167) stock, to let that be determined by whether your brother and brother-in-law sold their's or not?

A. Yes, sir.

Q. Did you know whether or not for some time they had been desirious to retire from active business?

A. They had been for quite a while.

Q. This was a concern that did an enormous business, was it not?

A. Rather.

Q. And to be run successfully required not only a manufacturer, but to have large financial attention, did it not?

A. Very closely; yes, sir.

Q. Then, in the matter of whether you sold your shares or not, did you leave that to be determined by whether your brother and brother-in-law sold their's?

A. Yes, sir.

Q. In selling, in the practical work of negotiating for what they would get in selling, did you manage or know how it was managed, or did you leave it with your brother and brother-in-law?

A. I left it entirely to them.

Q. Were you content to take the price that they were able to procure, or did you give your ideas of price?

A. I did not say a word

Q. And when it came to sign agreements did you bother your head about them much, or did you sign what your brother and brother-in-law had agreed should be drawn up?

A. I signed what they agreed to draw up.

Q. Did you hear whether those papers were drawn up by them out of their own head or by their counsel?

A. I believe they consulted Mr. McMurtrie.

Q. He had been your legal adviser for a long while? And if he got you to swear to a matter of law, I suppose you would swear to it. In (168) making that sale did you care in any | way, shape or form whether Spreckels sold or whether Spreckels did not sell?

A. No, sir.

Q. Did you care in any way, shape or form whether Knight sold or Knight did not sell?

A. No, sir.

Q. Did you care in any way, shape or form whether the Delaware Sugar House sold or did not sell?

A. No difference whatever.

Q. Did you, in point of fact, have, or know, or hear that your brother or brother-in-law, or did you yourself have anything to do with any of these people in negotiating your own matter?

A. I had nothing to do at all.

Q. Did you ever hear that your brother and brother-in-law consulted them in any way or shape as to whether they would sell or not, and sell dependent upon them?

A. Oh, no.

Q. I suppose, as a matter of fact, it would have been rather an injudicious thing to have conducted joint negotiations and let one know the other was selling, and what they would get?

A. Yes, sir; very bad.

Q. Still, as to negotiation, you had nothing to do with it?

A. Nothing to do at all.

Q. You do not know who sold?

A. No, sir.

Q. When you sold did you understand that you sold out and severed your stockholding in the Franklin Sugar Refinery or not?

A. Severed everything.

Q. Was there any bargain made by you or any negotiation with you before you sold out that you should still continue your connection with the company?

A. No, sir; no bargain at all.

(169) Q. After you had sold out and parted with your interest, | you were approached by Mr. Theodore Havermeyer, and you bargained then for the first time, did you, as to your connection with the business.

A. I did not give him an answer then; it was later on.

Q. It was an entirely new matter?

A. Yes, sir; not to be considered then.

Q. Were you at liberty?

A. I did not know then whether I was to remain in or not.

Q. You did not know whether you cared to remain?

A. If the rest went out I thought I would go out also.

Q. So at a subsequent negotiation entirely independent from the first sale before you continued?

A. Yes, sir.

Q. And then you settled what you would be paid for your salary?

A. Yes, sir.

Q. If that had not been satisfactory, or the business had not been satisfactory, were you at liberty to do what you pleased?

A. Yes, sir.

Q. Now, with regard to the actual transfer of your shares and the receipt from those to whom the sale was made of the consideration, who managed that?

A. Mr. C. C. Harrison and Mr. W. W. Frazier.

Q. And when they received their shares, and when they transferred these shares, do you know the dates?

A. No, sir; I do not.

Q. And I suppose if Mr. C. C. Harrison and W. W. Frazier had received your shares and consideration, you would not have been in any particular hurry and expect them to turn the cash over?

A. Not at all.

Q. You knew it was entirely safe?

A. Entirely safe.

By Mr. McMurtrie:

Q. You used a word in the cross-examination that I want | to get accurate. You were asked if you had heard of the negotiations for the sale of the Spreckels factory, and so on. I want to know whether you ever heard before the sale of your shares of any negotiations excepting what you saw in the paper? (170)

A. That is all.

Q. For how many months or years had you seen the papers stating that there were negotiations of this kind going on?

A. I should say about a year.

Q. You saw the same statement in the newspapers with regard to negotiations for yours, did you not?

A. No, sir.

Q. Did you know of any such negotiations going on?

A. No, sir.

By the District Attorney:

Q. Was there any change in the officers of the Franklin Sugar Refining Company after the transfer to the American Refining Company?

A. No, sir; with the exception of one, on account of my brother, Alfred, being abroad, or going back abroad, W. W. Frazier, Jr., was put in his place, if I remember rightly.

Q. I want to know who were the directors and who were the officers of the Franklin Sugar Refining Company before you sold to the American Sugar Refining Company. I want the old ones.

A. C. C. Harrison was president; A. C. Harrison, vice-president; W. W. Frazier, treasurer; W. W. Harrison, manager; Mitchell Harrison, secretary.

Q. Are those all the officers and all of the board of directors?

A. Yes, sir.

Q. Every one of those gentlemen was a director and every one of them was an officer?

A. Yes, sir.

(171) Q. After you sold to the American Sugar Refining Com- | pany who were the directors of the Franklin Sugar Refining Company?

A. I gave them.

Q. Give them again.

A. W. W. Harrison, president; Mitchell Harrison, vice-president; George H. Frazier, secretary and treasurer; and W. W. Frazier, Jr., manager.

Q. And who are on the board of directors?

A. Same four.

Q. And no more directors then?

A. No.

Q. Charles C. Harrison and W. W. Frazier then have dropped out of the board of directors and officers?

A. And also A. C. Harrison.

Q. And W. W. Frazier, Jr., appears?

A. Yes, sir.

Edward Browning, sworn:

By the District-Attorney:

Q. You reside in Philadelphia?

A. Yes, sir.

Q. Were you a stockholder in the E. C. Knight Company?

A. No, sir.

Q, Were you a stockholder in E. C. Knight & Co.?

A. I was a member of the firm of E. C. Knight & Co.

Q. Will you please explain what were the relations of the firm of E. C. Knight & Co. and the E. C. Knight Company.

A. E. C. Knight & Co. rented the refinery from the E. C. Knight Company.

Q. And E. C. Knight & Co. was a partnership?

A. E. C. Knight & Co. was a firm, and they as a firm rented the refinery from the E. C. Knight Company.

Q. Did you hold any stock in the E. C. Knight Company at all?

A. No, sir; no share.

(172) Q. Were you concerned in any way whatever in the sale of the interests of the E. C. Knight Company to the American Sugar Refining Company?

A. No, sir; I was not concerned in it at all, except Mr. Knight asked me what I would do if it was sold out. That was the only way I was interested.

Q. When did he speak to you about it?

A. Some time in the spring; I do not remember the exact date; some time in the early spring.

Q. Cannot you give us a little closer than that?

A. No, sir; I have not really any idea when it was; some time in the early spring.

Q. With reference to the sale of the American Sugar Refining Company, can you tell us about how long before this sale was made this conversation took place?

A. A short time. I imagine about two weeks. Perhaps it was not quite so long.

Q. Do you know who were the stockholders of the E. C. Knight Company?

A. I know some of them; don't know whether I know all or not.

Q. Recite those you know of the E. C. Knight Company.

A. I know Mr. Knight was the owner of it and E. C. Knight, Jr. I really do not know who the other stockholders were. I never had very much to do with it.

Q. Of whom was the firm of E. C. Knight & Co. composed?

A. Of E. C. Knight, Richard E. Clay, F. E. Langenheim, E. C. Knight, Jr., and Edward Browning.

Q. What was your interest in the firm of E. C. Knight & Co.?

A. Ten per cent.

Q. And what were your duties in connection with it?

A. I used to do whatever was connected with the office. Did a great deal with you up at the custom-house.

Q. What did you tell Mr Knight you would do if this sale was made? (173)

A. I told him I did not know exactly what I would do; whatever I could get to keep me out of mischief.

Q. Are you still employed with E. C. Knight & Co.?

A. Our firm still exists; yes, sir; not very much employment.

Q. Does E. C. Knight & Co. still have a lease from the E. C. Knight Company?

A. No, sir; not any refinery to lease now; we have not got it any more; nothing there but the office and an old man about eighty years of age.

Q. Is the refinery in operation?

A. I have not been down there. I believe it is in operation to a certain extent. I believe they are melting sugar there.

Q. When did E. C. Knight & Co. give up their lease upon the refinery?

A. Some time in the spring, I think.

Q. Can you fix any date?

A. I think it was in May, the latter part of May.

Q. You did not sell anything at all to the American Sugar Refining Company as far as you were concerned?

A. No, sir.

Q. You received nothing from them?

A. I received nothing from the directors.

Q. Did you receive anything from the American Sugar Refining Company in connection with this sale?

A. No, sir; not directly from the American Sugar Company.

Q. What did you receive, if you wish to state or will state?

A. I received so many shares of stock from Mr. Knight, which he gave me as a present.

By Mr. Phillips:

Q. Was it the stock of the American Sugar Refining Company?

A. Yes, sir.

(174) By the District Attorney:

Q. Who is running the E. C. Knight Company now? I mean, have the old management gone out of it?

A. Yes, sir.

Q. Entirely?

A. Yes, sir; we have gone out of it entirely.

Q. Do you know who is running the refinery?

A. I believe that Mr. Harrison has charge of it.

Q. When did you first hear that the E. C. Knight Company was to be sold to the American Sugar Refining Company?

A. That was some time in the early spring; I really do not know what the dates were exactly; I know it was all done between the first of July and the first of January, 1892, but the exact dates I do not remember.

Q. Can you say whether or not it was prior to the fourth of March?

A. When I first heard it.

Q. Yes, sir?

A. Yes, sir; it was.

Q. It was prior to that date?

A. I think so; yes, sir.

Q. Had you at that time heard that the Spreckels, the Franklin and the Delaware, or any of them, were to be sold?

A. Nothing except what I heard in the papers, and rumors.

Q. You had heard rumors and seen it in the newpapers?

A. Heard rumors for years that Spreckels was in it, but I did not have any official knowledge that they were in it.

Q. Did you ever say anything to Mr. Kninght about those rumors?

A. I asked him whether he ever heard it and he said he did not know positively.

Q. He had heard the rumors but he did not know positively whether that was so or not?

A. He heard it rumored that Spreckels was going in; we all heard that.

(175) Q. Before the sale, the 4th of March?

A. Before we went in; when I heard we were going in it I did not know whether Spreckels was in it or not.

Q. You thought he was?

A. I thought he was from the different rumors that were on the street.

Q. Did you ever hear any such rumors about the Franklin?

A. Not as I did about Spreckels; no, sir.

Q. And the Delaware?

A. The Delaware I did not know anything about, one way or the other.

Q. Did you ever see Mr. Searles when he was over here?

A. Yes, sir.

Q. Were you present at any conversation between him and Mr. Knight?

A. Yes, sir.

Q. Can you tell us what occurred at that conversation?

A. He told us he was going to close up the house; he said that for a time our house would be closed

Q. He told you that for a time your house would be closed?

A. Yes, sir.

Q. Was this before this contract was made?

A. No, sir; that was afterwards.

Q. How long afterwards?

A. About a month, I should judge.

Q. Did he state why the house was to be closed?

A. I do not remember if he did or not.

Q. Did you ever hear any conversation between Mr. Searles and Mr. Knight prior to the making of this contract?

A. No, sir; I never met him until that day.

Q. How much longer did that lease of the E. C. Knight Company have to run?

A. Our lease was a year, a year lease, if I remember correctly. It was understood that the first of the year we would | lease the refinery (176) for another year the same as we signed our articles of agreement for partnership.

Q. What was given you to induce you to release your lease upon the premises?

A. I had no personal lease.

Q. I mean your first lease that E. C. Knight & Co. had on the refinery.

A. I do not remember really that there was any; it was the understanding that Mr. Knight could dissolve the firm at any time he wanted to, so that the rest of the members did not have anything to say whether it would go on or not, so we did not have to have anything given to us.

Q. Did you ever see the lease between the E. C. Knight Company and E. C. Knight & Co.?

A. No, sir.

Q. Can you get a copy of that lease?

A. I do not know whether I can or not. We never had any written lease It was merely a verbal understanding between Mr. Knight and the firm.

Q. What was the capital of your firm—of E. C. Knight & Co.?

A. A million and over.

Q. You mean to say that a firm having a capital of a million dollars invested and running a valuable plant had no written agreement or lease?

A. No, sir.

Q. Do I understand you that you were not consulted at all with reference to giving up your lease upon the premises until it was sold?

A. I was told we were going to do it. I knew Mr. Knight always stood by me before and he would not do anything that was not right. I never interfered one way or the other.

Q Was there any provision made by which the firm of E. C. Knight & Co. received anything from the E. C. Knight Company or the American Sugar Refinery to pay them for the balance of their term?

A. No, sir.

(177) Q. You have spoken of Mr. Knight having made you a present. Did he make the other members of the firm a present?

A. Yes, sir.

Q. Was that present in proportion to the interest that you had in the firm?

A. Yes, sir.

Q. Have you any objection to stating what was the amount that was divided among the members of E. C. Knight & Co.? Were you given shares of the American Sugar Refining Company?

A. I was given ten per cent of what we got for the refinery.

Q. You were given ten per cent. of what you got for the refinery?

A. Yes, sir; in stock.

Q. What was the amount that the refinery was sold for?

A. $2,050,000.

Q. How was that paid?

A. It was half in preferred stock and half in common stock.

Q. And you received, as member of the firm of E. C. Knight & Co., ten per cent. of that amount, half the preferred and common?

A. I made a little mistake. There was $200,000 worth of the sugar stock and I got my ten per cent. of the $200,000. Mr. Knight made the members of the firm a present of $200,000 worth of stock.

Q. How much stock did it take to make the $200,000?

A. I believe it took at par two thousand shares; it is $100 a share.

Q. You adhere to your answer that the refinery sold for $2,050,000.

A. Yes, sir; I made simply an error in what my proportion was.

Q. The E. C. Knight Company received from the American Sugar refining Company $2,050,000 in stock?

A. Yes, sir.

(178) Q. And the E. C. Knight Company gave to E. C. Knight & Co., in proportion to their respective shares, $200,000 of stock, which was divided among them?

A. Yes, sir.

Q. And then E. C, Knight & Co. gave up their interest as lessee of the refinery and went out of business? Is that the way I am to understand it?

A. Yes, sir; of course we could not close at once, our firm still continues.

By Mr. McMurtrie:

Q. In liquidation?

A. Yes, sir.

By the District Attorney:

Q. You are practically going out of business and will go out of business as soon as you wind up your affairs?

A. Yes, sir; we take in no new business.

Q. Do you know whether E. C. Knight Company received any cash from the American Sugar Refining Company?

A. I believe not; I never heard of ever receiving any cash.

By Mr. Ralston:

Q. At this conversation between Mr. Searles and Mr. Knight, which I think you said occurred shortly after this contract was made—this contract was made on the 4th of March?

A. Yes, sir, I should think it was some time in May or early part of June.

(Mr. McMurtrie objects, as far as his defendants are concerned, to any evidence resulting from conversations between Mr. Searles and Mr. Knight.)

Q. How long after the 4th of March did this conversation occur? can you fix the date?

A. I imagine it was about six weeks, as well as I can remember; that would be about the middle of May.

Q. That would bring it the middle of April?

A. That is so. It was some time late in the spring; I do not remember exactly.

Q. At that conversation you heard Mr. Searles state that the Knight Sugar Refinery was to be shut down? (179)

A. He said he would close up, as we thought, for a short time.

Q. Did he state what the object was in closing that establishment?

A. He stated—I really forget what his reasons were.

Q. Do not you remember that he stated it was for the purpose of reducing the amount of sugar manufactured in this city?

A. Never heard him say that.

Q. Cannot you remember what he did say?

A. No, sir; I do not remember what reason he stated.

Q. Can you remember what Mr. Knight said?

A. Mr. Knight said, "Well." That is about all he said.

Q. Can you tell me if anything was said at that time in reference to the Franklin and the Delaware and the Spreckels refineries?

A. He stated that he would transfer our raw sugars over to Harrison, Frazier & Co.

Q. That is the Franklin Refinery?

A. Yes, sir.

Q. Was anything said at that time about the negotiations for the purchase of those refineries.

A. No, sir; he was there a very short time and talked right to the point, and there was not any side remarks at all.

Q. Did you ever hear Mr. Knight state that he knew the American Sugar Refining Company had bought, or were about to buy, the Spreckels and Franklin and Delaware Refineries, or any of them, prior to the fourth day of March?

(Objected to by Mr. McMurtrie.)

A. I often heard Mr. Knight say that he wished he knew whether they were going in or not.

Q. When did you hear him say that, some time before?

A. I do not remember asking him about it.

(180) Q. I want to know if it was on or about the fourth day of March, or was it a long time previous to that?

A. It was a very long time.

Q. Six weeks?

A. No, sir; I should not think as long as that.

Q. How long?

A. Just before our contract was made.

Q. You cannot fix the date?

A. No, sir; I think the contract date was the fourth of March and it was a short time before that.

G. Franklin Davis, sworn.

By the District Attorney.

Q. You reside in Philadelphia?

A. No, sir; I reside in Collingwood, New Jersey.

Q. Were you a member of the firm of E. C. Knight & Company?

A. No, sir.

Q. Were you a stockholder in the incorporated company, E. C. Knight Company.

A. Yes, sir.

Q. Can you state who were the other stockholders of that corporation?

A. E. C. Knight, E. C. Knight, Jr., R. E. Clay, F. D. Langenheim, and myself. Originally, Thomas Cochrane.

Q. Were you connected with the refinery in any way?

A. I was connected with the office work.

Q. In what capacity?

A. As bookkeeper and cashier.

Q. Were you acquainted with John E. Searles?

A. No, sir.

Q. Did you ever meet him?

A. I have met him; yes, sir.

Q. When did you first meet John R. Searles or see him?

A. I think it was ten days, or two weeks, possibly, after the dating of that contract.

Q. About the fourth of March, 1892?

A. Yes, sir.

(181) Q. You had not seen him at any time before that?

A. No, sir.

Q. Under what circumstances did you see him at this time?

A. He came over to Philadelphia in regard to some detail matter in reference to the contract.

Q. Was he there in your office?

A. No, sir.

Q. Where did you see him?

A. Mr. Knight's house.

Q. What did he say at that time in reference to the Knight Refinery being shut down?

A. Did not say anything at all.

Q. What matter of detail did he come over upon?

A. Very little detail it was.

Q. What was it?

A. Very little said; I do not remember now what was said.

Q. Do you know upon what matter he came over?

A. He came over to transfer, to deliver the stock and receive the stock of the E. C. Knight Company.

Q. Were you summoned, were you requested to be present at that meeting?

A. Yes, sir.

Q. By whom were you requested?

A. Mr. Knight.

Q. Who else was there?

A. Mr. Knight's son, I think.

Q Were you four all that were present?

A. Yes, sir.

Q. Did you at that time transfer your stock to the American Sugar Refining Company or John E. Searles?

A. No, sir.

Q. When did you make your transfer of the stock?

A. I have not transferred it.

Q. Have you sold it?

A. No, sir.

Q. Have you never sold your stock?

A. No, sir.

Q. How much stock did you own? (182)

A. Ten shares.

Q. What was the purpose of your being present.

A. You asked me how much I owned.

Q. I asked how many shares of stock you owned and you said ten shares; is that correct?

A. I did not own it.

Q. You did own it, did you not?

A. It was in my name.

Q. What was done with that?

A. Still remains.

Q. Did you ever own it?

A. No, sir.

Q. Why was it put in your name?

A. For the purpose of organizing the company.

Q. Who was the owner of it?

A. E. C. Knight was the real owner.

Q Who is the real owner of it now.

A. John E. Searles.

Q. Upon behalf of whom was he acting?

A. I really do not know.

Q. The American Sugar Refining Company?

A. I do not know.

Q. Did you see Mr. Knight make a transfer of his stock to John E. Searles, and John E. Searles deliver to Mr. Knight the stock of the American Sugar Refining Company?

A. I saw him deliver a portion of it, I think a majority of the stock, at that time.

Q. In accordance with the agreement made on the fourth day of March?

A. It was not fully delivered; it was carrying out that agreement, delivered him his stock.

Q. Delivered part of it on account of that agreement?

A. Yes, sir.

Q. Was that the first delivery made to Mr. Knight?

A. Yes, sir.

(183) Q. What was the purpose of your being there?

A. Merely to see if Mr. Searles had any directions to give in the attention to the office work.

Q. What directions did he give you?

A. He did not give me any.

Q. Did you receive any directions or orders from Mr. Searles, or any one representing him, with reference to the management of the work of the E. C. Knight refinery?

A. Not then.

Q. Have you subsequently?

A. I have received directions about the accounts; yes, sir; how the accounts were to be kept.

Q. Did you receive any directions as to the suspension of work?

A. No, sir.

Q. The E. C. Knight Company was an incorporated company prior to the transfer of its stock to the American Sugar Refining Company or to Mr. Searles?

A. Yes, sir; E. C. Knight Company.

Q. An incorporated company?

A. Yes, sir.

Q. Who were the directors of that corporation prior to the transfer?

A. E. C. Knight, E. C. Knight, Jr., R. E. Clay, F. D. Langenheim and myself.

Q. Who were the officers of the company?

A. The officers were: President, E. C. Knight; treasurer, E. C. Knight, Jr., and secretary, F. D. Langenheim.

Q. Are those all the officers of the company?

A. Yes, sir.

Q. Who are the directors of the E. C. Knight Company at the present time?

A. The directors are the same with the exception of Mr. Knight, whose position is vacant.

Q. By reason of his death?

A. Yes, sir.

Q. He was a director up to the time of his death? (184)

A. Yes, sir.

Q. Who were the officers?

A. The officers and directors were the same.

Q. No change in either the stockholders or directors by reason of the sale to the American Sugar Refinery?

A. No, sir.

Q. Did Mr. Knight sell and transfer to John E. Searles all of his stock in the Knight Company?

A. Yes, sir; he sold all of it.

Q. And did that include the sale of the stock that was in your name; was that also transferred?

A. Yes, sir.

Q. Do you know whether the stock, all stock owned by E. C. Knight, Jr., was transferred to John E. Searles or sold to him?

A. Yes, sir.

Q. Of all the other members of the firm?

A. Yes, sir.

Q. The other members of the company I mean. Do you know if any stock is still standing in your name?

A. I do not know it except that I have never—that E. C. Knight, Jr., is the treasurer, and I have never heard of any meeting being called, nor of any transfer being made on the books. I would have known it if there had been.

Q. Is the E. C. Knight Company still engaged in any business?

A. No, sir. Is the E. C. Knight——

Q I mean the incorporated company. Is that doing anything?

A. No, sir.

Q. The E. C. Knight Company were owners of the plant of the Knight Sugar Refinery?

A. Yes, sir; the property.

Q. Owned the real estate, the property, the plant and everything?

A. Yes, sir.

Q. Was that turned over to John E. Searles? (185)

A. No, sir; the stock was turned over.

Q. Up to the date that the sale was made to Mr. Searles, was the Knight refinery in operation?

A. Yes, sir.

Q. For how long had it been engaged actively in the manufacture of sugar, for a number of years prior to that sale?

A. Yes, sir.

Q. One of the four refineries located in Philadelphia?

A. Yes, sir.

Q. Competing in the business of manufacturing and selling sugar?

A. Yes, sir.

Q. Is that refinery still in operation?

A. It is in operation now.

Q. What is it doing now?

A. It is engaged in the refining of sugars in connection with the Franklin Sugar Refining Company.

Q. Does the Knight Company refine any sugar or does it merely melt the sugar and pass it over?

A. The Knight Company have nothing to do with it at all

Q. Is there any sugar manufactured in the Knight refinery at the present time?

A. In the refinery none. There is, I understand, sugar partially refined.

Q. It undergoes one process in the Knight refinery and then is transferred to the Franklin refinery?

A. I think it is made a part of the plant of the Franklin refinery, as I understand it.

Q. The corporation of the E. C. Knight Company is still kept up?

A. The corporation is kept up, I believe.

Q. How many are employed by the E. C. Knight Company at the present time?

A. None.

Q. How many men employed?

A. At least to my knowledge, I do not know.

(186) Q. You are a director in the company, are you not?

A. Yes, sir.

Q. And as far as you know no one is employed now by it?

A. As far as I know there is not.

Q. How many men did you employ prior to the sale? I mean now, entirely by the E. C. Knight Company. You know how many men were employed?

A. Previous to when?

Q. Previous to the sale to John E. Searles, Jr.

A. I suppose about three hundred.

By Mr. Johnson:

Q. We are talking of E. C. Knight Company now?

A. Yes, sir. I must correct myself. I meant E. C. Knight & Co.

By the District Attorney:

Q. E. C. Knight & Co. now is winding up its business and employs no one does it?

A. No, sir.

Q. You knew, did you not, that the American Sugar Refining Company was attempting to negotiate sales with the Franklin Sugar Company?

A. No, sir.

Q. The Spreckels Company?

A. No, sir.

Q. Or the Delaware Sugar House?

A. No, sir.

Q. Did you never have any knowledge, direct or indirect, that they were contemplating such a purchase?

A. The only knowledge I had was through the newspapers.

Q. You did have knowledge through the newspapers?

A. Yes, sir.

Q. Never heard Mr. Knight speak about it?

A. No, sir.

Q. Did not you hear Mr. Knight say that he would be | very glad to (187)
know whether the American Sugar Refining Company was endeavoring
to buy out those competing refineries?

A. No, sir; never heard him say that.

Q. Did you ever hear him say anything that would be anything like that?

A. My impression is that he would have liked to have known.

Q. I do not care for your impression. I want to know if you heard Mr. Knight say in substance that he would like to know whether these other people were going to sell or not?

A. I do not remember hearing it.

Q. Give us your best recollection. I do not ask for his words, but the substance of what he said.

A. I think he did express himself in that way. I do not remember.

Q. How long was that before the sale was made to John E. Searles?

A. This was after Mr. Knight's agreement that I heard him express himself in that way.

Q. Did you ever hear him express himself substantially to the same effect prior to March 4th, 1892?

A. No, sir.

Q. Prior to March 4th, 1892, did not you have knowledge, direct or indirect, that negotiations were in progress with those other refineries?

A. I had no direct knowledge.

Q. What knowledge did you have?

A. Only through rumors and the newspaper publication.

Q. By the rumors you mean told to you by some one?

A. Yes, sir.

Q. And you also read in the newspapers that these sales were in contemplation?

A. Yes, sir.

Q. How long did you have that sort of indirect knowledge | before (188)
this sale was made? how long did you have that knowledge before the sale?

A. I did not have the knowledge; I only read of it in the newspapers for months previous to this time.

Q. Had there not been during the winter of 1892 a great many rumors to the effect that the American Company was about to buy out the Philadelphia refineries, and were there newspaper publications to the same effect, which you saw?

A. There were different publications that they were attempting to buy different refineries, but I never heard they were trying to buy them all.

Q. Heard of different ones at different times?

A. Yes, sir; different ones at different times.

Q. You did hear about the Franklin Company?

A. Through the papers.

Q. And about the Spreckels?

A. Same way.

Q. Did you hear about the Delaware?

A. No, sir; I did not.

Q. The Delaware is a comparatively small refinery, is it not?

A. Yes, sir.

Q. Much smaller than any other refinery in Philadelphia?

A. Yes, sir.

Q. It was a matter of common talk, was it not, in your office? have you not heard the other members of the firm of E. C. Knight & Co. and of E. C. Knight Company speak of these rumors and newspaper publications?

A. Oh, yes, sir.

Q. It was a matter in which you would be directly interested, would it not?

A. I would be interested; yes, sir.

Q. I mean to say this: If there was a sale of the other Philadelphia refineries except your own to the American Sugar Refining Company it would have a serious effect upon own your corporation, would it not?

A. I cannot say that; no, sir.

(189) Q. Would or would not the consolidation of the four Philadelphia refineries with the American Sugar Refining Company affect the price of sugar and the control of the output of sugar in the United States?

A. I think it would affect the price; yes, sir.

Q. As a matter of fact, would it not make it more difficult for your refinery, which was not upon a very large scale, to compete in the market against the consolidation of these three companies with the American Sugar Refining Company in connection with their own refineries, than it would be if the three Philadelphia refineries had not merged with the American Refining Company?

A. I do not think it would.

Q. You think that the consolidation of all the sugar refineries in the United States, except one or two, into one central company would not affect the market so far as the two companies were concerned?

A. No, sir; I do not know the effect on the market. That is impossible for me to say. The other two refineries, I think, could run to advantage.

Q. You think it would be just as easy to compete against a large company with a hundred million capital as against a number of small companies divided into small capitals?

A. Yes, sir.

Q. Have you received any directions from the American Sugar Company, or John E. Searles, with reference to making sales to grocers or other dealers in sugar in Philadelphia?

A. No, sir.

Q. Or with reference to any rebate to be paid to grocers or sugar dealers?

A. No, sir.

Q. Do you know who makes the contracts here in Philadelphia for the sale of sugar?

A. No, sir; I do not know.

Q. Who make the contracts for the sale of sugar in the Knight Company?

A. We are not in business.

Q. You have no sugar, then? (190)

A. No, sir.

Q. What did you do with the sugar you had on hand when you stopped running, through E. C. Knight & Co.?

A. E. C. Knight & Co. sold their sugars.

Q. To whom?

A. Sold some—you mean the refined sugars?

Q. Yes, sir.

A. To the trade.

Q. On their own account?

A. Yes, sir.

Q. And they sold their raw sugars?

A. At what time do you refer to?

Q. I mean at the time that you made the transfer to the American Sugar Refining Company.

A. Up to that time E. C. Knight & Co. sold their sugars to the trade.

Q. I mean the amount they had on hand after they sold to the American Sugar Refining Company. Did they sell the sugar to the American Refining Company?

A. No, sir.

Q. What did they do with that?

A. Sold it to the trade.

Q. And they sold their raw sugar to whom?

A. They refined their raw sugars for a time. I am speaking of E. C. Knight & Co.

By Mr. Ralston:

Q. You say that refinery is now running as part of the Harrison refinery?

A. I believe so.

Q. Then all the sugar that is refined there, or partially refined, is sold by the Harrison Company?

A. I believe so.

Q. And no sales made at all by you or any of the other officers of the E. C. Knight Company?

A. No, sir.

By Mr. Johnson. (191)

Q. During the two years preceding the sale of the E. C. Knight Company's stock about how many times did you hear that Spreckels had sold out or was about to sell out?

A. I cannot remember; it was a number of times—a great many times.

Q. Was it not a fact that for years preceding this the newspapers were constantly announcing that one or the other refineries, or all, were sold out or were being sold out?

A. Yes, sir.

Q. It was the old cry of wolf often repeated?

A. Yes, sir.

Adjourned until Friday, October 14, 1892, at 4 P.M.

Friday, October 14, 1892, 4 P.M.

Present—James M. Beck, Esq., Examiner. Hon. Samuel S. Phillips, Ellery P. Ingham, Esq., United States District Attorney, and Robert Ralston, Esq., Assistant United States District Attorney, for the United States. Samuel Wagner, Esq., and John G. Johnson, Esq., representing certain defendants.

Thomas Cochrane, having been duly sworn, was examined as follows:

By Mr. Ingham.

Q. Were you a stockholder of the E. C. Knight Company?

A. I will tell you the history of it. Mr. Knight had this incorporated, and as a friendly act for him I acted at his request as one of the corporators, and also as one of the directors. I had no pecuniary interest except the stock which he put in my name sufficient to make me a director. It was his stock. It was whilst I was connected with him in (192) other business, which had nothing to do with the sugar business, and I did not give any attention to it. It was merely as a corporator and stockholder for him.

Q. Did you have any knowledge whatever of the transaction which took place by which the stock of the Knight Company was transferred to the American Sugar Refining Company?

A. None whatever.

Q. Did you ever have any conversation with Mr. Knight in reference to it?

A. No. Previous to that time I met with an accident, which confined me to the house a couple of months with a broken arm. I read something in the paper about it, contradictory and so on. I was in the country and did not see Mr. Knight. I would see him generally in the evenings, as I had to stay home in the evenings. I really did not know anything about it.

Frederick D. Langenheim, having been duly sworn, was examined as follows:

By Mr. Ingham.

Q. Are you a member of the firm of E. C. Knight & Co.?

A. I am.

Q. Were you also a stockholder of the E. C. Knight Company?

A. I was.

Q. Were you cognizant of the sale that was made of the stock of the E. C. Knight Company to the American Sugar Refining Company through John E. Searles, secretary and treasurer?

A. Not until after the sale was all consummated.

Q. Had you ever had any conversation with Mr. Knight in reference to that sale?

A. None whatever.

Q. Or with Mr. Searles?

A. None whatever.

Q. Or with any other person? (193)

A. None at all.

Q. What were your duties in connection with the firm of E. C. Knight & Co.?

A. I was manager of the refinery.

Q. How long had that refinery been in operation?

A. About ten years, I think.

Q. What was the average yearly capacity of that refinery?

A. About half a millons pounds a day.

Q. Will you please put it into barrels?

A. About from twelve to fifteen hundred barrels a day.

Q. That was its daily average capacity?

A. Yes sir.

Q. Your connection with the company was merely as manager of the refinery. You have no knowledge regarding the transaction that occurred between Mr. Knight and the American Sugar Refining Company?

A. I have not.

Q. Are you still employed at that refinery?

A. I am not.

Q. When did your employment there cease?

A. About the middle of August of the present year.

Q. When was the refinery turned over to the American Sugar Refining Company?

A. I think it was some time in March, 1892.

Q. Very shortly after the sale was made?

A. Shortly after; yes.

Q. Are you now a stockholder of the American Sugar Refining Company?

A. It seems to me that is a personal matter of mine. Unless I am compelled to answer that I think that I ought not to say anything about it.

Q. Did you not receive stock for your interest in the Knight Company?

A. No, sir.

Q. Explain how you did receive shares of the American Sugar Refining Company?

A. I received them from Mr. Knight. He gave them to me. (194)

Q. Did it represent your interest in the firm of E. C. Knight & Co.?

A. No, sir; it did not.

Q. Was it given to you as a present?

A. If you wish to put it that way.

Q. Explain how you received it. For what purpose?

A. I received it as voluntary on Mr. Knight's part. I received it voluntarily from Mr. Knight. He gave them to me.

Q. Did E. C. Knight & Co. have a lease from the E. C. Knight Company?

A. Yes, sir.

Q. Was that a written lease?

A. No, sir.

Q. How long had you been in the possession of the Knight Refinery under that lease?

A. I had been in possession since the time it was first opened; I think some ten years ago.

Q. You held that refinery from year to year, did you?

A. Exactly.

Q. Was there any notice given you prior to the sale that your lease would terminate?

A. No, sir.

Q. On what terms did E. C. Knight & Co. surrender their lease of the refinery?

A. Mr. Knight had the power to withdraw the leaase or terminate the firm whenever he chose, and he chose to terminate it at that time.

Q. At that time he made a distribution of stock in the American Sugar Refining Company among the members of the firm of E. C. Knight & Co.?

A. He gave us some; yes, sir.

Q. In proportion to your shares and interest in the E. C. Knight & Co.?

(195) A. I cannot say that he did; no, sir.

Q. Can you say that he did not?

A. He did not give it to us in proportion.

Q. Are you now employed by the American Sugar Refining Company?

A. I am not.

Q. Have you ever been in their employ?

A. I should say yes, sir.

Q. In what capacity?

A. As running the house immediately after the transfer until the house was closed.

Q. Is the refinery of E. C. Knight & Co. at the present time closed?

A. I do not know. I do not think that they are turning out any sugars.

Q. Did you also have the management of the sales for E. C. Knight & Co.?

A. I did not.

Q. I understood you to say that you were a stockholder in the E. C. Knight & Co.?

A. Yes, sir.

Q. Did you transfer your stock to the American Sugar Refining Company?

A. I suppose it was transferred along with the rest of the stock.

Q. Were you a stockholder to a considerable amount, or merely a nominal stockholder?

A. Merely nominal.

Q. The stock was really held by Mr. Knight?

A. Yes, sir.

Q. It was put in your name in order to make you one of the directors of the corporation. Was that the idea?

A. Yes, sir.

Q. Did you personally transfer the stock? Did you sign a transfer of the stock?

A. Not at the time of the transfer to Mr. Searles I did not.

Q. Have you at any time signed the transfer of that stock? (196)

A. I think I signed a power of attorney once, but I do not know whether I did or not. It was when the stock was first issued.

Q. Did you receive from that stock any stock of the American Sugar Refining Company?

A. No, sir; I did not.

Q. Are you still a director of the E. C. Knight Company?

A. Yes, sir.

By Mr. Ralston:

Q. Please give us the capacity of your works for the year.

A. I think we turned out between one hundred and thirty-five and one hundred and fifty million pounds a year. You can count about three hundred and thirty pounds to the barrel. I have really forgotten the figures in pounds. Divide that by three hundred and thirty, on an average, and it will give it to you.

E. C. Knight, Jr., having been duly affirmed, was examined, as follows:—

By Mr. Ingham:

Q. You are a son of E. C. Knight, deceased?

A. Yes, sir.

Q. You were a member of the firm of E. C. Knight & Co.?

A. Yes, sir.

Q. And a stockholder of the incorporated company—the E. C. Knight Company?

A. Yes, sir.

Q. What do you know with reference to the transactions that took place between the E. C. Knight Company and John E. Searles, or any other person representing the American Sugar Refining Company, for the sale of the stock of the E. C. Knight Company?

A. The principal reason for my father giving up his interest in the E. C. Knight Company was his age, I think. He was very glad to make the transfer of stock, and I think it was solely on that account that he did make it.

(197) Q. When was that transfer made?

A. It was made, I think, on the 4th of March of this year.

Q. How long prior to that time did you know that negotiations were in progress for the sale of the stock to Mr. Searles?

A. Possibly a couple of weeks. Two or three weeks, I imagine.

Q. Did you at that time know that the American Sugar Refining Company was contemplating the purchase of the Spreckels, the Franklin, or the Delaware Sugar House?

A. I did not, absolutely.

Q. Had you any knowledge whatever, direct or indirect, that they were attempting to purchase the stock of these companies?

A. No, sir.

Q. Did you ever have any conversation with your father in which that subject was mentioned prior to the sale on the 4th of March?

A. I may have had, but never any assurance on his part that they were to.

Q. Can you say in substance that such conversation might have been to the effect that negotiations were in progress with these other companies?

A. No, sir.

Q. About what was the substance of the conversation that you had with your father with relation to these other negotiations?

A. I cannot recollect any conversation. I simply say that there may have been.

Q. I mean the substance and not the entire conversation?

A. I cannot recollect that there was any conversation on that point. I simply say that there may have been. I do not recollect now anything that could have led me to think that any other refineries were parting with their stock.

Q. Did you yourself have any conversation with Mr. Searles?

A. I did.

(198) Q. What time was that?

A. That was, possibly, a couple of weeks before. From then on until the transfer of stock was made.

Q. Do you mean by that the 4th of March?

A. Yes, sir.

Q. In that conversation with Mr. Searles what was said with regard to the advantage of purchasing the other Philadelphia refineries?

A. Nothing, I think.

Q. Are you positive of that, that there was nothing said with reference to the advantage it would be to the American Sugar Refining Company to purchase the Philadelphia refineries?

A. Yes, sir: I am very positive.

Q. That there was nothing said?

A. Nothing.

Q. Did he say anything to you in any of these conversations with reference to the purchase of any one of the other companies? Not all of them; but did he say anything about the Spreckels Company, that he had contemplated buying that or had an offer of it or anything to that effect?

A. No, sir.

Q. Or of the Franklin Company?

A. No, sir.

Q. Or of the Delaware Sugar House?

A. No, sir.

Q. You were familiar with the rumors that were on the street that Mr. Searles was contemplating buying the Franklin and the Spreckels Company, were you not?

A. Yes, sir.

Q. You were also familiar with the newspaper reports?

A. Yes, sir. I refer to the newspaper reports.

Q. Were there not rumors on the street in addition to the newspaper reports?

A. Not to my knowledge.

Q. In the conversation that you had with Mr. Searles or | that Mr. (199)
Searles had with your father prior to the 4th of March, did not Mr. Searles insist that if he purchased your father's shares that he was to purchase all the shares of stock that were issued of the E. C. Knight Company?

A. My father and myself owned all the shares of the E. C. Knight Company

Q. Your father really owned it all?

A. He and I together owned the entire stock of the E. C. Knight Company. The other shares were simply for the purpose of organization, ten shares given to each of several gentlemen.

Q. You and your father were in reality the owners of all the stock of the E. C. Knight Company?

A. Yes, sir.

Q. You of course made an agreement to transfer all of your stock as well as your father to transfer all of his stock?

A. Yes, sir.

Q. That is to say, Mr. Searles was dealing with you for the purpose of buying all of the stock of the E. C. Knight Company?

A. Yes, sir.

Q. He was not attempting to buy or did not offer to buy your interest or your father's interest, but he wanted the whole thing?

A. All the stock has not been transferred. Some of the stock still stands in other names.

Q. Mr. Searles' understanding was that he was to have a transfer at some time of all of the stock?

A. Of the E. C. Knight Company.

Q. And that he did not try to deal with you individually, but he proposed to have all of the stock that was issued?

A. Yes, sir.

Q. Did you transfer your stock to him?

A. With the exception of ten shares, that still stand in my name.

Q. Are you the owner of that?

A. No, sir; I am not. (200)

Q. It was put in your name for what purpose?

A. It was put in my name for the purpose simply of organization. At that time I had no other stock in the E. C. Knight Company.

Q. The ten shares are now in your name for the purpose of organization?

A. Yes, sir.

Q. But you are merely the nominal owner of them?

A. That is all.

Q. And the real ownership is in the American Sugar Refining Company or John E. Searles?

A. Yes, sir.

Q. You received in exchange for your stock in the Knight Company stock of the American Sugar Refining Company, did you not?

A. Yes, sir.

Q. That stock was delivered?

A. Yes, sir.

Q. You are the holder of some of the stock of the American Sugar Refining Company at the present time, are you not?

A. I am.

Q. The E. C. Knight Refining Company, prior to the sale made on the fourth of March, was engaged in the manufacture and sale of refined sugars, was it not?

A. The firm of E. C. Knight & Co. was.

Q. The E. C. Knight Refining Company itself was manufacturing sugar, and it was being sold?

A. Yes, sir; being sold by the firm of E. C. Knight & Co.

Q. It was actually under the management of E. C. Knight & Co

A. E. C. Knight & Co. leased the refinery from the company.

Q. That was an independent refinery, was it not?

A. Yes, sir.

(201) Q. You were a competitor for the trade in Philadelphia?

A. Yes, sir.

Q. And at that time there were three other independent sugar refineries in Philadelphia who were active competitors of yours?

A. Yes, sir; to the best of my knowledge.

Q. After the transfer of the Knight Refinery to the American Sugar Refining Company it was closed, was it not?

A. After the stock was transferred: yes, sir; for a short time.

Q. At the time that you were engaged in the manufacture and sale of sugar, you sold it, of course, in Pennsylvania and in other States in the United States?

A. Yes, sir.

Q. You sold it in various parts of the United States, did you not?

A. We did; yes, sir.

Q. Did you have charge of the selling department?

A. No, sir; not all.

Q. Are you familiar with the prices of sugar?

A. Fairly only.

Q. Are you familiar with the number of sugar refineries in the United States, in 1891?

A. Not familiar enough to give a definite answer; no.

Q. Either upon the price or upon that I had better ask some one else than you?

A. Yes, sir.

(Mr. Knight is re-examined by Mr. Johnson on behalf of the E. C. Knight Company, and cross-examined by him on behalf of the Franklin Sugar Refinery.)

Q. Do you think your father, entertaining, of course, the natural affection of a father for his son, would have been apt to have sold his shares and left you in the cold when Mr. Searles was buying?

A. No, sir.

Q. Therefore it was not necessary for Searles to insist that he should (202)
get all? Your father would have protected you, you think?

A. I know that he would have.

Q. Your father had the majority, had he not?

A. Yes, sir.

Q. And then the majority would have passed to other people, and the minority would have had the usual rights and results of such?

A. Yes, sir.

Q. How often do you think you have heard in the last five years that the American Sugar Refining Company, or its predecessors, have been negotiating or have bought your establishment before they did?

A. The actual number it is impossible to tell. Possibly one hundred times.

Q. I suppose you would not infrequently get up in the morning, and, taking your usual dose of the morning newspapers, find that you had sold, or were just about to sell your refinery?

A. Frequently.

Q. There was not a lack of information that Spreckels had sold also?

A. It was sold a great many more times than ours.

Q. Did Mr. Searles, being an innocent and confiding man, when he was negotiating for the purchase of your property, say: "Now, Mr. Knight, I am going to buy the other refineries out also"?

A. No, sir.

Q. Do you think, from your knowledge of his character, that he would have been apt to have communicated to you the information that he was going to buy the others out, and told you, perhaps, what he was going to pay them? Do you think he would have been apt to have done that?

A. Not very likely.

Q. Perhaps you would have been altogether averse to knowing that he (203)
was going to buy the others?

A. We should have been extremely glad to have known it.

Q. As a business matter it would not have put you to a disadvantage to have known that fact?

A. Decidedly not.

Q. Was any condition made by him that he would not buy yours unless he would get the rest?

A. No, sir.

Q. Did you make any such condition that you would not sell unless he got the rest?

A. No, sir.

Q. When the sale was made it was put into writing, and was absolute sale or conditional upon any other condition than that the Sugar Refining Company should get the right to issue the requisite number of shares? Was there any other condition but that?

A. None whatever.

Richard E. Clay, having been duly affirmed, was examined as follows:

By Mr. Ingham:

Q. Were you a member of the firm of E. C. Knight & Co.?

A. Yes, sir.

Q. Were you a stockholder of the firm of the E. C. Knight Company?

A. I had ten shares put in my name, but I never owned them. They were put in my name at the time the company was incorporated.

Q. What were your duties in the firm of E. C. Knight & Co.?

A. I had charge of the sales of the company.

Q. How long before the stock of the E. C. Knight Company was transferred to Mr. Searles did you have knowledge that it was in contemplation to make a sale?

(204) A. I had no knowledge at all that any negotiation were going on until I saw the contract.

Q. That was the first intimation you had of it from any source?

A. Yes, sir.

Q. You never had any conversation with Mr. Knight in the office or otherwise? He never informed you that he proposed to sell it?

A. No, sir.

Q. Are you familiar with the prices of sugar?

A. Yes, sir.

Q. What was the average price of refined sugar per pound in February, 1891?

A. I do not remember without referring to the price lists.

Q. Do you know what the price of sugar is at the present time?

A. Yes, sir.

Q. What is it worth at the the present time?

A. Five cents, less a rebate of three-sixteenths for granulated. They bill them at five cents and allow a rebate of three-sixteenths.

Q. What do you mean by a rebate?

A. I mean three-sixteenths when the bill is paid. They bill them at five cents and allow a rebate of three-sixteenths a pound off the five cents.

Q. What is the idea of the rebate?

A. So the grocers can make that. I do not know. That is a rule the American Sugar Refining Company have made. I only know what I see in the newspaper. Five cents is newspaper quotation. That is the only knowledge I have.

Q. You say that is an order made by the American Sugar Refining Company Do you know anything about that order having been made?

A. No, sir; only what I have seen in the newspapers.

By Mr. Ralston:

Q. Do you attend to the sales of E. C. Knight & Co. now?

A. No, sir.

Q. You are not connected with or employed by the American Sugar Refining Company? (205)

A. No. Sir.

Charles C. Harrison, having been duly affirmed, was examined as follows:

By Mr. Ingham.

Q. You were one of the principal stockholders in the Franklin Sugar Refining Company?

A. Yes, sir.

Q. You were president of that Company?

A. Yes, sir.

Q. You heard the list of officers of the company, both before and after the transfer to the American Sugar Refining Company, given us by your brother?

A. Yes. sir.

Q. That was correct, was it?

A. It was correct. I have no doubt it was correct. I can give them over again.

Q. How long have you been in the business of refining sugar?

A. Since the first of January, 1863.

Q. As president of the Franklin Sugar Refining Company, what were your duties in connection with that office?

A. I had the special duty of buying the raw sugars for the refinery, and the general cousulting position as president of the company.

Q. Were you the general manager of the financial part of the business?

A. No sir; I was not. Mr. Frazier had that responsibility. He had the management of the finances.

Q. You were no doubt familiar with those who were your competitors in the trade?

A. Yes, sir.

Q. And knew in February, 1891, who were engaged in the manufacture of sugar?

A. Yes, sir. (206)

Q. What company was at that time your principal competitor in the United States?

A. The American Sugar Refining Company.

Q. And in February, 1892, the same?

A. The same; yes, sir.

Q. Will you tell us what refineries were operated or owned or controlled by the American Sugar Refining Company in February, 1892?

A. In Boston, the Standard Refinery. I do not know whether those were working or not. The Standard, Boston, or Continental. All the refineries in Boston with the Exception of the Revere.

Q. What was the capacity of the Revere?

A. That was a very small house with, I suppose, a capacity of about one thousand barrels a day. Probably a little less. Eight hundred to a thousand barrels a day.

Q. What refineries in New York?

A. All the refineries in New York were under the control of the American Sugar Refining Company, and in Brooklyn and Jersey City, calling New York that district, including Williamsburg. New York and Jersey City.

Q. Did the American Sugar Refining Company own, operate and control refineries in Missouri?

A. The American Refining Company owned, I believe, the old Belcher Refinery at St. Louis, but whether they owned it all or the majority of the stock I do not know. I believe it is controlled by them, but I think it has not been operated by them for a number of years.

Q. The stock is controlled by them?

A. I do not know. I believe it is in some way under their control.

Q. The Forrest City Refinery, of Portland?

A. I do not think you can call it a sugar refinery. It was a molasses refinery. I believe, however, it did make some sugar in a small way, (207) but in a very small way, and I believe | is also under their control. The Louisiana Sugar Refining Company and the Sugar Refiners' Company in New Orleans also.

Q. And the Planters' too?

A. I think both of them. I think in 1892. I do not know what was the case in 1891. I think that was the case in 1892.

Q. Did they own a refinery in California, or operate one there?

A. I cannot answer as to that. The refinery in San Francisco I can only believe was in friendly accord with the management of the American Sugar Refining Company. I cannot answer upon that point.

Q. What other refineries in the United States were engaged in the manufacture of sugar independent of the trust, in February, 1892?

A. Nash, Spalding & Co., the proprietors of the Revere, and four Philadelphia refineries. Those were, I think, the only refineries. The Spreckels, probably, in San Francisco.

Q. These six refineries were, to your knowledge, the only independent refineries engaged in the manufacture of sugar in the United States, except those operated by the trust?

A. To make it accurate I would like to make it five, because I do not know as to the refinery in California. I want to be exact in answering you, and I do not know as to that.

By Mr. Johnson:

Q. Do you think they run Spreckels' in California?

A. I think at that time Mr. Spreckels had made an arrangement with the trust for his consolidated management of the Pacific Coast. I am not sure of that fact.

By Mr. Ingham:

Q. As early as February, 1892?

A. Yes, sir. My impression is, it was not run independently, but I do not know. So far as my knowledge goes, the five refineries in the United States which were run independently on the first of February, 1892, were the four refineries in Philadelphia and the refinery in Boston to which I referred.

Q. At the present time how many refineries in the United States are run independently of the sugar trust? (208)

A. I think the only refinery which is run independently of the sugar trust is the Revere of Boston, but I do not know as to that?

Q. And the capacity of that is less than a thousand barrels?

A. I think about eight hundred to a thousand barrels of refined sugar a day.

Q. In February, 1892, what was about the average daily product of sugar in the Uunited States?

A. I should suppose in this year of 1892 the consumption of refined sugar will be in the neighborhood of a million and a half tons, but I could not answer that without going back to the figures.

Q. Will you make an examination of that, and, at some future meeting, give us the information?

A. I will do so.

Q. What was about the average daily production of your refinery in the year 1891 and 1892?

A. I suppose from one million eight hundred thousand to two million pounds a day; divided by three hundred and thirty—I should say between fifty-five hundred and six thousand barrels a day of refined sugar.

Q. Are you familiar with the prices of sugar?

A. Yes, sir; I think I am, fairly; not as well as I used to be.

Q. Take the average price in 1890, 1891 and 1892; what was it, about?

A. I could not answer that question without reference.

Q. Will you make a referenne to that also, and let us have that at some future meeting?

A. I will.

Q. On behalf of yourself and the other stockholders of the Franklin Sugar Refining Company, you made a sale of your stock to John E. Searles, Jr., for the American Sugar Refining Company, did you not?

A. No, sir; I did not. We made a sale of our stock to the American Sugar Refining Company—direct to the American Sugar Refining Company. (209)

Q. Through whom were the negotiations conducted on behalf of the American Sugar Refining Company?

A. By one of the managers of the American Sugar Refining Company. It was Mr. Parsons.

Q. John E. Parsons?

A. Yes, sir.

Q. When did you first have any negotiations with reference to making a sale of your stock?

A. The first negotiations with regard to a sale of the stock were made with Mr. Parsons in January of this year.

Q. Can you give us about the time?

A. I should say about the 15th of January; probably a little earlier. I had had a meeting with Mr. Parsons, which was, you might say, the initial of this question, in either November or December of 1891.

Q. What took place at that initial meeting?

A. I happened to be subpœnaed to attend a suit in New York City upon the sugar question, and Mr. Parsons was one of the attorneys. The conversation was entirely general; that the sugar business was not in a very good condition, and whether some arrangement could not be made by which it could be improved. It was in the court-room and it occupied but a few moments. I simply refer to that as having taken place during the latter part of last year, and as being the beginning of those negotiations with which Mr. Parsons was connected.

Q. At that time was it suggested that the sale of your refinery would be useful towards the improvement?

A. No, sir. It did not go as far as that at that time; it was simply the general condition of the business.

Q. What next took place?

A. The next step was a meeting with Mr. Parsons, following up the (210) general conversation which we had, to ascer- | tain whether an arrangement could be made with our firm by which production might be in some way regulated. That come to nothing because we were not willing to go into a combination with the American Sugar Refining Company.

Q. When was that conversation? Was that in January?

A. That conversation was either in the end of December or early in January of this year.

Q. At that time he wanted you to make some arrangement by which the production of sugar—

A. Should have some reference to the demand. We kept working along almost at the same ratio right through the year, and at times the demand for sugar was active, and at other times it was dull. He wanted some governor upon the engine.

Q. He wanted to be the governor, did he not?

A. We wanted to be the governor, and that was the difficulty.

Q. You could not agree which would be the governor at the time?

A. We would not enter into any arrangement which would not give us full control of our business.

Q. What did he next say to you?

A. Probably everybody knows that at the annual meeting of the American Sugar Refining Company, held in January, they applied for power to increase their capital stock, and the power which they sought was to increase their capital stock to the extent of $25,000,000. That puts in everybody's mind the inquiry, at least, what the increase was for.

Shortly after that I had a meeting with Mr. Parsons, at which he immediately said: "I want to come immediately to a question with you. We have, we think, the power to increase our capital stock. We would like to buy your stock. Will you sell it?" That was early in January of 1892.

Q. What did you say to him then?

A. I told him I would consult my co-stockholders, and I did so.

Q. Was Mr. Frazier then with you? (211)

A. No, sir. I was alone with Mr. Parsons. I consulted my co-stockholders, all members of my family. I was very desirous of retiring from business, my brother Alfred, I felt, was also desirous of retiring from business. One or two stockholders were desirous of remaining in business and continuing as they had done in the past. But after considering the question carefully, we all concluded that as one or more of us wished to retire from business, that we would embrace that opportunity to sell out our stock. Those that were engaged at the refineries put their details into my hands and those of Mr. Frazier.

Q. You then had another meeting?

A. We had a final meeting with Mr. Parsons at my office, 110 south Front street, on Saturday, the sixth day of February, and I closed the transaction with Mr. Parsons at that time.

Q. Was that transaction in writing?

A. The arrangement was a verbal arrangement, but it was an arrangement upon which each one passed his word of honor that he would stand by what took place at that meeting.

Q. You did not reduce that to writing?

A. I simply put that, and I have now a memorandum in my own handwriting, of the amount of stock which we would receive. He did not put his initials to it. He did not see it. I made it simply for my own convenience. If you look at the diary, you will find it was Saturday. On Saturday, about half-past three o'clock, in the afternoon, I accepted the offer for all our stock for a certain amount of shares of the American Sugar Refining Company stock. Our capital stock was $5,000,000, and our shares $100 each. I want to correct a certain thing. I agreed to sell out our refinery and the bone-black, and to do that in a certain legal way which counsel might advise was the proper way for it to be done, and for that we would receive a certain amount, and to transfer our | shares after certain things had been taken away (212) from our assets, as I think the agreement shows.

Q. You practically made the agreement on the sixth day of February, which was reduced to writing on the tenth of March?

A. We made the exact agreement on the sixth day of February, 1892, which was subsequently reduced to writing, and upon which each one passed his word of honor he would stand by.

Q. The stockholders of the Franklin Sugar Refining Company were to receive from the American Sugar Refining Company what?

A. We were to receive from the American Sugar Refining Company $10,000,000 in the stock of that company, half common and half preferred.

Q. At the time that you sold your stock, although you did not know that the American Sugar Refining Company expected to purchase the stock of the Spreckels Company and of the Knight Company, yet did you not have reason to believe that they did intend to do so?

A. No sir; not at that time. In fact I felt that they might not buy, and it had nothing to do with our transaction. It was not referred to.

Q. It had no reference to your transaction, had it?

A. None whatever.

Q. Can you tell us what knowledge you had, if any at all, directly or indirectly, of Mr. Searles, or Mr. Parsons, or any one on behalf of the American Sugar Refining Company, buying the interest of Spreckels and Knight's or any other companies?

A. I did not know of the sale of the Spreckels Refinery or stock, and I did not know of the arrangement between the American Sugar Refining Company and Spreckels Refinery, whatever that might have been, until, I should say, about the 8th or 10th of March, and I do not know to this day what it was.

(213) Q. And the only knowledge you had upon that subject would be the general rumor in the newspapers?

A. No, sir; I had particular knowledge about that time.

Q. In the time prior to the 8th or 10th of March, the only knowledge you had upon the subject of the Spreckels and the Knight stock was through the publications in the newspapers?

A. No, sir; I had definite knowledge of that matter about that time.

Q. And before that time?

A. No, sir; not at all.

Q. Before that time you did read in the newspapers that the American Sugar Refining Company was going to buy out Spreckels, did you not?

A. No, sir; I cannot say that I did.

Q. You did not see it in the newspapers?

A. I may have seen it, but it made no impression upon my mind.

Q. You drew no inference from the fact that the American Sugar Refining Company had increased its capital stock to $75,000,000 that they contemplated the purchase of other Philadelphia refineries?

A. Undoubtedly I had it in my mind from the increase of the stock that they might want to do something with the stock, but I did not bother myself to find out what they were going to do with it or pay any attention to it.

Q. There was never any intimation made by Mr. Parsons or Mr. Searles, or any other member of the American Sugar Refining Company, that they intended to follow up the purchase of your stock with the purchase of the stock of the other Philadelphia refineries?

A. Yes, sir. Mr. Parsons spoke to me about that, subsequent to his transaction with me. He asked me the general question whether, if I were in their place, I would buy Mr. Spreckels out or would not. This was early in March, a month after our operation had been concluded—quite a month after our operation had been concluded.

(214) Q. What did he say?

A. He did not seek this as an opportunity to consult me upon that question. It was when we were preparing the contracts to carry out the verbal agreement which we had, that he took this opportunity to speak. The answer which I gave him was, I would look to the character of the man; that I thought Mr. Spreckels might be a bull in a china shop, and with that before me, if I could buy, I would buy. If he had been a different kind of a man I would not have bought.

Q. Do you know whether the American Sugar Refining Company was the successor of the Sugar Refiners' Company?

A. I believe that this company was the successor of the Sugar Refiners' Company, known as the Sugar Trust, and which was closed under process of law.

Q. And that the American Sugar Refining Company issued stock to replace the trust certificates that had theretofore been issued by the Sugar Refiners' Company?

A. I have no knowledge upon that point; direct or indirect. I never held a share of the stock of the old sugar trust. I know nothing about it. I never held any of their certificates, and I absolutely know nothing about it.

Q. Can you tell me what companies were acquired by the American Sugar Refining Company prior to February 6, 1892, that were not owned by the sugar trust?

A. I do not know as to that. I could not testify as to that.

Q. I suppose neither are you in a position to testify which of the refineries are now working.

A. No, sir; I do not know.

Q. What have been your relations to the American Sugar Refining Company since the transfer of your stock to them?

A. I believe the original contract carried with it an obligation upon our part to conduct the business for thirty days; I think that is in the contract. Subsequent to that, Mr. Parsons asked us whether, as an accommodation to them, as it would be rather a hardship to throw so large an organization upon their hands instantly, if we would agree to run for thirty | days longer as a personal favor to him. We said immediately we (215) would do so. We ran it, I think, from the 12th of March to the 10th or 11th of April, and the additional thirty days ran it to the 10th of May. Mr. Parsons then went to California, from whence he was called by the death of his daughter, and he asked us if we would, on account of that absence, continue the business ten days longer, which we did, and which carried it to the 20th of May, as was testified to yesterday.

Q. Since that time have you been in any way connected with the American Sugar Refining Company?

A. No, sir; on the contrary, I was offered the position in control in Philadelphia and with corresponding emolument of salary, and declined to have anything to do with the concern.

Q. You are a large stockholder in the American Sugar Refining Company, are you not?

A. I hold some of the stock. I am at liberty to sell the stock at any time. I have sold part of it. I can sell the rest of it to-day, and can build a refinery if I want to and go into business again.

Q. Do you know what was the value of the trust stock in February of 1892? I mean the selling market value.

A. I think that the common stock of the company sold between eighty and eighty-five and the preferred stock probably between ninety and ninety-five, at that time. I would have to refer for accuracy.

Q. Do you know what was the selling value of that stock two months after that?

A. It fluctuated widely. It advanced to par and declined nearly ten points after this advance. That is, the common did. The preferred, I think, followed nearly *pari passu* with it.

Q. The American Sugar Refining Company have managers or controllers here in Philadelphia, have they not?

A. I do not think they have.

(216) Q. You think there is no representative of the American Sugar Refining Company here?

A. I do not. To the best of my knowledge I believe there is none.

Q. The American Sugar Refining Company owns all the stock of the Franklin, Spreckels and Knight refineries?

A. I only know as to the Franklin. I know nothing except as to the Franklin. Whatever else I know upon that point is hearsay.

Q. Have you any knowledge that Mr. William W. Harrison is to be the manager of the Spreckels Refinery, as well as the Franklin Refinery?

A. I myself arranged the management of the present Franklin Refining Company. Our annual meeting is held in February of each year. We had appointed directors for the year. We had all concluded to go out of business, and all of us five had determined when we sold to go out together. About the 15th of April, more than two months after our sale, I was asked by Mr. H. O. Havermeyer to meet him in regard to the management, and he asked me if I would not take that place, and I declined.

Q. Manager of what?

A. Of the Franklin Sugar Refining Company.

Q. Did that not include all of the refineries in Philadelphia?

A. No, sir; just the Franklin. I have no doubt it might have included the Philadelphia business, the whole of it, but it was in reference to the Franklin refinery. I definitely declined and at that time announced the declination of all the five directors of the Franklin Sugar Refining Company to continue. That was in last April. Mr. Havermeyer made some suggestion to us. I told him as a friendly thing I would do it. The first member of our family, who early in May evinced a willingness to continue the occupation, was my brother Willie, and he was subsequently joined by my brother Mitchell. I said: Why not let (217) these two, with Mr. | Frazier's two sons, have this occupation? It was arranged about the middle of May that they should go into the direction, we electing them before we went out; we had the management for a year under the election in February. They went into the management, there being now, I believe, a vacancy in the board, but they took their terms of service distinctly upon three months' notice upon their part, or upon the other part, so they can get out when they want to.

Q. Do you know that it is contemplated by the managers of the American Sugar Refining Company to have the Spreckels Company put also under the management of your brother William ?

A. I do not know that. I think that it would be a relief to them to have as much work thrown upon the men here as they could possibly put upon them.

Q. Who is managing Spreckels Refinery here?

A. I do not know. I think their engineer, Mr. Watson, whom I have never seen. This is all hearsay. I do not know anything else about it.

By Mr. Philiips :

Q. I understood you to say that your purpose in selling out the Franklin Sugar Refining Company was to get rid of the business ?

A. I wanted to get out of business. I had been in it for thirty years. I had broken down in health twice, and my brother Alfred was most anxious to retire from business.

Q. By busines you mean the business of directing?

A. No, sir; I mean the exacting cares of the sugar refining business. In 1889 we had done a business of $43,000,000, and I had broken down in health twice, and was obliged to travel once with a physician, and I made up my mind two months before, and, in fact, we had been in negotiation just before the Baring panic for the sale of our business.

Q. In your business as an official of the company?

A. To get right out of the sugar refining business, and not | get within four squares of Front and Chestnut streets, if I could keep away. (218)

Q. I understand that, notwithstanding that, you sold your stock in the Franklin Refining Company for an equal in value of stock in another sugar company ?

A. Yes, sir.

Q. You did not go out of the sugar business as far as your interests were concerned ?

A. Yes, sir; I sold more than half of what I have. Yes, sir; I sold the stock. I exchanged the stock of our company for the stock of another company.

Q. Since then you have sold a part of the American Sugar Refining Company's stock ?

A. Yes, sir.

Q. Will you object to saying how long after you exchanged you made the sale ?

A. I would rather not say. I have not the slightest objection to giving you an outline of what I did with the stock. That will reconcile exactly with what my brother Willie said yesterday on the question. I received and put into my box all the stock of the American Sugar Refining Company which was given in payment of what they bought from us. We have been selling some of that stock from time to time. The amounts that have been received from those sales have been deposited to my account, as trustee in one or more places, and I sent Mr. William Harrison money from time to time according to his interest in the sales of that stock.

Q. We understand that it was a mistake to say that the stock of the Franklin Sugar Refining Company was sold for half cash and half stock?

A. Yes, sir; I had all the details.

Q. It was all either common or preferred stock?

A. Yes, sir; it was sold for half common and half preferred.

(219) *Cross-examination.*

By Mr. Johnson:

Q. You went to work and marketed it?

A. Yes, sir. So what my brother said was absolutely correct. I have had the stock and only sent him a short time ago his interest in his name in the unsold portion. He did not know anything about it. That was just because I was the oldest brother.

Q. You were trustee?

A. Yes, sir. We just opened an account in the bank.

Q. In all the negotiations the rest of the family entirely turned the matter over to you and Mr. Frazier?

A. I was the oldest son and Mr. Frazier the next in age, and we two handled the business matters. The stockholders were all my brothers.

Q. The Franklin Sugar Refining Company, was, of course, a local institution?

A. Yes, sir.

Q. If it had endeavored to sell its shares in the local market, it would have been a very difficult thing, of course, to have done it, because of its local character, would it not?

A. Yes, sir.

Q. It would have been a very difficult thing to dispose of except in the whole, would it not, to any advantage?

A. It would have taken a long while to have made a name for the stock.

Q. It was not a thing that was dealt in on the market?

A. There had never been a transaction in it.

Q. It was a family institution?

A. All of it was held by our family.

Q. Whilst the American Sugar Refining Company's shares were dealt in in the markets of the United States?

A. Yes, sir.

Q. And were quoted and sold from day to day?

A. Yes, sir.

(220) Q. Which would have been the most marketable, if you had wanted to sell your shares, the Franklin or the American Sugar Refining Company?

A. The American Sugar Refining Company's shares were those with which we could deal.

Q. And the business which you carried on was, of course, a very large and extensive business?

A. Yes, sir.

Q. One that required a good bit of thought and a great deal of attention?

A. And a great deal of anxiety.

Q. And your desire to get out of business was a *bona fide* one?

A. Absolutely. Not only to get out of business, but get into other avocation.

Q. You have got out?

A. Yes, sir.

Q. And you propose to stay out?

A. Yes, sir.

Q. Was any condition of any sort or kind imposed in making your sale relative to the American Sugar Refining Company getting other refineries?

A. Not the slightest.

Q. Would you have made any sale on any such terms; that is, conditional upon their getting others?

A. It never was presented to me. I never gave it any consideration.

Q. How did your transaction differ in any way from the transaction of a man holding all the shares, or representing the holding of all the shares of a large manufacturing concern, disposing of the same to the best advantage to himself?

A. In no way whatsoever.

Q. There had been some negotiations previously for the purchase?

A. Yes, sir.

Q. That was not the American Sugar Refining Company at all? (221)

A. No, sir.

Q. It was, I suppose, in connection with some of those English syndicates?

A. Yes, sir.

Q. Would the disposition that you carried into effect to sell the American Sugar Refining Company exist equally if you had got a sufficient price from any other purchaser?

A. We would have sold to anybody.

Q. It was a question of price?

A. Absolutely a question of price.

Q. In making that sale, did you have in view anything whatever with regard to the product or the affecting of future product, or manufactures, or commerce of the United States?

A. None whatsoever in the slightest degree.

Q. You had shares of stock that you wanted to be rid of if you could get a good price?

A. I wished to retire from the sugar refining business.

Q. Do you know anything to prevent any person with requisite capital building one refinery or two refineries, at the present time?

A. None whatever.

Q. There is no monopoly of the materials that enter into the construction of a refinery, is there?

A. No, sir. There are two being built now.

Q. What, as a man who has had some experience in the business, would be your idea as to the probabilities of refineries being constructed if the price of sugar was put up in any way so as to make it pay?

A. I think now that the chief obstacle to the erection of refineries in competition to the American Sugar Refining Company is uncertainty as to the action of Congress. There is a minimum protection now upon refined sugar, a half a cent a pound, almost less than that of any other industry, and about fifteen per cent. upon the raw material. The free | (222) traders says: "It is as near as we want you to come to free trade." If Congress takes off that duty, it would so disturb business it would get entirely unprofitable.

Q. That would scare people going into it?

A. The shadow of that thing prevents people going into it now. If Congress would say: "We will not disturb this minimum duty for ten years," you would find refineries going up.

Q. The fear that they may take it off may prevent them?

A. In my judgment that is the controlling preventive of building refineries.

Q. If the price of refined sugar is such as to show a good profit upon it, and it appears likely that that profit will continue, what is your idea of the construction of plenty of refineries?

A. My thought is that if any one has the reasonable expectation of profit in the business, they will be drawn to that business.

Q. Do you think it is possible to monopolize the refining of sugars in America, if the price of the article manufactured is reasonably certain to be high enough to make a profit?

A. Undoubtedly no.

Re-direct examination.

By Mr. Ralston:

Q. You spoke about a conversation with Mr. Parsons, in which Mr. Parsons asked you what your opinion was of his buying the Spreckles Refinery?

A. Yes, sir.

Q. And you said that Mr. Spreckels might turn out to be somewhat of a bull in a china shop. Knowing that he was that sort of a man, you advised him to buy. Was that right?

A. Yes, sir.

Q. What did you mean by that?

(223) A. I do not think Mr. Spreckels was a business man. If he | had been dealing with a man who acted upon usual business principles———

Q. In what way?

A. I think Mr. Spreckels conducted his business in a very bad way. That was the reason that I made that remark.

Q. Why would it be to his advantage to buy him out, if he conducted the business in a bad way?

A. Because he would make more money buying him out.

Q. Make more money than Mr. Spreckels did?

A. He would make more money by buying him out than he would make if Mr. Spreckels was his competitor. He transacted his business in an unbusinesslike way.

Q. In other words, Mr. Spreckels was a dangerous competitor to the American Sugar Refining Company?

A. They might make less money with him in the business than with him out.

Q. In other words, Mr. Spreckels' character was such that he might give the American Sugar Refining Company a good deal of trouble in the market in competition. Was not that it? That was what you were driving at?

A. Yes, sir. He was a man you could not tell what he would do.

Q. In other words, if they did not buy him out, they would not have the complete control of the market they otherwise would have?

A. No, sir; not that. On the contrary, I thought if they had been in competition with a person who was guided in buying and selling his sugars by the usual principles which to my mind govern men who conduct large businesses, that they better let him alone; but being in competition with a man who might put the raw material up upon them by imprudent buying, or acting in ways which to my mind were unbusinesslike, that that kind of competition they had better remove.

Q. In other words, that that kind of competition would prevent their control of the price of sugar here?

A. No, sir. That they would net more in their business by being rid (224) of him than by having him in business alongside of them.

Q. You never tried to sell any of your shares in the market, did you?

A. No, sir.

Q. So that you do not know whether you could have sold them or not?

A. No, sir. We had an agreement, being a family affair, in case of death the shares had to be offered to the remainder.

Q. That was because you did not want a lot of outsiders mixed up with your business?

A. We had never been in business except with our own family, and we did not want to be in business with strangers.

Q. When you sold to the American Sugar Refining Company the advantage of that sale to you was no greater than it would have been to anybody else?

A. No greater, unless I got more dollars from somebody else.

Q. At the same time, you knew it was a very great advantage to the American Sugar Refining Company, did you not?

A. I thought it was an advantage to them.

Q That influenced the price somewhat, did it not?

A. Not in our minds. We had named the same price.

Q. Had you named the price, or did they make an offer for it?

A. They at first intimated a somewhat lower price and I said we would not go on at that price.

Q. Did you fix the price by the value of your capital, &c., and stock?

A. We made up in our own minds what we would take to go out of business, and we said that and stood by it. Two years before that we named that price to other people, competitors of the American Sugar Refining Company.

Q. When you sold your stock to the American Sugar Refining Company, you knew at that time, as I think you said you did, at the time the (225) personal contract was made, that | they were going to buy these other companies here, and you had the conversation about Spreckels, and you knew that that was contemplated at that time, did you not?

A. I did not know it was contemplated until close on the tenth of February.

Q. That is close on to the time that contract was signed?

A. Yes, sir. Prior to the signing of that contract we had, in pursuance of the agreement of the sixth of February, taken an inventory of our place, prior to the signing of that contract, and had conducted the business relying on the faith of the former agreement. We had used the opportunity of a small inventory to take an inventory at that time, prior to the signing of the contract.

Q. When you sold your stock to the American Sugar Refining Company, did you not know that it would benefit that company very considerably to have control of your refinery, your refinery being one of the largest in the United States?

A. I have no question it would. I had no doubt of it. I think they would have bought our refinery if they had not succeeded in buying any other.

Q. Because yours was the largest refinery in this city and, next to the Havermeyer and Elder, was the largest in the United States?

A. Yes, sir. I have no doubt they would have bought ours.

Q. You received from the American Sugar Refining Company no-money, nothing but shares of stock?

A. Received no money, nothing but shares of stock from the American Sugar Refining Company.

Q. Is it not a fact that when that sale became known on the market, the price of the shares of the American Sugar Refining Company advanced very considerably? You remember that to be a fact do you not?

A. When the transactions of about the 10th or 15th of March, or the rumors of them, became prevalent, the stock did advance, and I think it (226) advanced prior to that upon what | you might call knowledge of the insiders, although I never bought a share.

Q. The effect upon the market when this sale became known was to raise the price of sugar certificates, was it not?

A. Undoubtedly.

Q. So that by selling to the American Sugar Refining Company, and taking shares of their stock, you got the same benefit that the American Sugar Refining Company got? It was a greater benefit to you in that way than it would have been to sell to some outside persons, was it not?

A. That would depend entirely upon what they paid us in.

Q. They paid you the same amount we will say, in cash or stock in their company. I am not speaking of a large company like the American Sugar Refining Company, but of a private person.

A. If we hold all the stock and the stock advanced we certainly would share in the benefit, undoubtedly.

Q. Mr. Johnson said that you or any other person would be at perfect liberty to build a refinery here, and you answered yes.

A. Yes, sir.

Q. And that if the price of sugar was high enough to justify it, you could make money by doing that? Is not that so?

A. Yes, sir; I think so.

Q. Is it not the fact that to-day the American Sugar Refining Company controls the price of sugar in the United States?

A. Not altogether; no, sir.

Q. You have said that the American Sugar Refining Company owned every refinery, or controlled it, with the exception of the Revere, which is one of the smallest refineries in the country?

A. Yes, sir.

Q. Do they not control the price of sugar?

A. No, sir.

Q. They control the output of it, do they not? (227)

A. Yes, sir.

Q. They could lower the price to four cents to-morrow if they pleased?

A. Yes, sir.

Q. If you enter into a refinery on the price to-day of five cents, to-morrow you might be ruined; is not that so?

A. Yes, sir. You could be with any competitor. Europe fixes the price of refined sugar here, as well as the American Sugar Refining Company. As an illustration of operation of the American Sugar Refining Company, by reducing the price of raw material all over the world reduced the importing point of refined sugar. They put down the price of refined sugar upon themselves. That is, German granulated sugar could not be imported at the time at which the American Sugar Refining Company had control of all the refineries, or nearly all, for less than a certain figure, say four and three-eighths cents. They reduced their offers upon raw material which is the product of foreign countries, and that affected the price of beet-root sugar and German granulated sugar, and consequently they reduced the price at which the competitive article could be brought into this country.

By Mr. Ingham:

Q. Supposing the American Sugar Refining Company should put up the price of sugar two cents a pound, would not the people be compelled to pay that price?

A. Of course, for a certain time, with a demand of one hundred and twenty-five thousand tons of sugar a month, which I believe is the demand in 1892. It takes some time to prepare abroad for such a condition of affairs, and there would be a corner in refined sugars for the time being.

Q. It is entirely within the power of the American Sugar Refining Company to put up the price of sugar as well as to put it down as far as their control is concerned?

A. For the time being; yes sir.

(228) Q. If they put up the price of sugar, it would be a consid- | erable period before sugar enough could be brought from Europe to supply this demand, would it not?

A. I cannot tell how long that would be. There is always the resistance of the people to higher prices, which lasts longer than anybody imagines. They can abstain from buying a long time. The unseen stocks of any article of general use, such as sugar, enable people to live upon them for a much longer time than people imagine, and it would be a very short time before sugar would come here from Europe.

Q. Is there any surplus product of sugar?

A. German granulated sugar has been coming to Chicago within the last few weeks, I am informed.

Q. Would not there be a sugar famine in the United States if the American Sugar Refining Company should stop the sale of sugar that it would take several months before the market could be supplied?

A. I think not.

Q. It would take a considerable period of time?

A. Some time.

Q. It would take a year at all events?

A. Oh, no, sir. There is not a sugar-producing country in the world that would not turn sugar into an edible condition—wherever sugar was made. In twenty-four hours they would all begin to make sugar for the American demand wherever sugar was being made. For example, I mean all cane sugar is made by centrifugal machines, and it is only the question of getting a little more or less sugar, by which you make it not quite so white. People might not get so white sugar, but they would get sugar testing ninety-nine or ninety-eight. They could get it as fast as they could eat it.

Q. The price of sugar in the United States at the present time is in the control of the American Sugar Refining Company, is it not?

A. Temporarily; yes, sir.

Q. Either to enhance or to lower the price?

A. In my judgment, for a time.

(229) Q. They could put the price a certain proportion above the present price and still not come into competition with the European market?

A. I think it would take a little while. I do not know how long before any immoderate action of that kind could be prevented.

Q. How much did you say was the daily consumption of sugar in the United States?

A. I think that the consumption of sugar this year is about one hundred and twenty-five thousand tons a month.

Q. A half a cent or a cent a pound on one hundred and twenty-five thousand tons a month would make a considerable sum in a very short time, would it not?

A. Yes, sir.

Q. Would it not be entirely feasible for the American Sugar Refining Company to put up the price of sugar a half a cent or a cent above the market price, and then before their competitors could get their sugar in the market, they could reduce it again to the normal price or even lower than the market price? Could they do that?

A. Of course they could.

Q. Would not that be a very satisfactory business proposition?

A. No, sir. I do not think it could emanate except out of a crazy house. I do not think any sane man would contemplate any such thing as that. I do not think any such suggestion would come into any business man's head. They could put up the price of sugar a cent a pound and they could put it down again if anybody else brought sugar here.

Q. In the meantime they would receive from their sales at the rate of one hundred and twenty-five thousand tons a month a very large sum of money, would they not?

A. They would never do it more than once, and nobody would buy of them a second time. I do not think the questions that you have asked would ever be practical questions.

Q. If the fair market price of sugar, allowing a fair profit | to the (230) manufacturer, were a certain price, could not the American Sugar Refining Company advance the price of sugar an eighth of a cent a pound, or a quarter of a cent a pound, without coming into competition with any one at present excepting the Revere Refining Company?

A. No, sir. I think they are now in competition with Germany at the present prices.

Q. There is a duty of a half a cent a pound?

A. A half a cent a pound plus ten cents if the sugar comes from a bounty-paying country.

By Mr. Phillips:

Q. So far as sugar making in this country is concerned, without reference to foreign competition, they might advance it a point or two, might they not?

A. That would depend on the season of the year. If it came in the time of the Louisiana crop, with one hundred and fifty thousand or two hundred thousand tons of sugar, it would be a difficult thing for them. They could not control the market at that time.

Q. Up to a point? I mean twelve and a half cents.

A. Yes, sir. I think so.

Q. They could raise it a point?

A. Yes, sir.

Q. Two points?

A. I do not know. They could bring in the foreign competition.

Q. You think they could raise it a point?

A. It is just like the importing or exporting of gold. You cannot raise the rate of exchange above a certain point without exporting gold. You cannot reduce it below a certain point without importing it. It is not worth while discussing that point. You have got to look the world over and see where the competitor would step in.

Q. You cannot say with regard to the domestic competition what their situation would be by raising it a point?

A. I could not answer that without knowing what the foreign article was.

(231) Q. I am talking about domestic questions?

A. I could not. I think the temporary power of any organization which holds such a large percentage of the total refining capacity of the United States is temporarily a severe control. That is what I think.

Q. I understand, on the whole, that the control within a certain degree of the sugar market in the United States by the American Sugar Refining Company would, under the circumstances you speak of, depend on foreign competition?

A. I think foreign competition would immediately very sensibly demonstrate their ability to control the price.

Q. That is, if it were not for the foreign competition, they would control a considerable margin of the price?

A. If there were no refined sugar made in the world, they would have, of course, pending the erection of competitive refineries here, great control of this market

Q. Their situation removes them from domestic competition to a certain degree?

A. Their situation removes them from domestic competition, except the production of cane sugar in this country and refined whether or not in competition with them.

By Mr. Ralston:

Q. That was not the case before those sales in March, was it?

A. No, sir. The American Sugar Refining Company was subject to the competition of the then independent refineries.

Q. And those four refineries in Philadelphia produced about thirty to thirty-three per cent. of the total output of sugar in the United States, did they not?

A. I do not know, but I should say you are approximately correct.

Re-cross Examination.

By Mr. Johnson:

Q. Something was said about the ruin of a man who put up a refinery at $5,000,000 by having $100,000,000 capacity in refineries being able to put down the price. Which would suffer the most by that?

(232) A. I would much rather go into the refining business to-day with one competitor than I would if there were a half a dozen.

Q. Knowing the producing power of your refinery, knowing its money-making powers, would you consider, apart from any question of monopoly, or anything else, the purchase of your refinery, at the price it was sold, by people who did want to carry on that business and had the capital to do so, a judicious one?

A. I should say their purchase was a most judicious one, and I think we received a very moderate price.

Q. And judicious apart from any idea of getting a monopoly?

A. Yes, sir.

Q. Just as the acquisition of a money-making plant?

A. I have said, in my judgment, if we had not been spoken to at all, and the other refineries had declined to sell out to them, and if they had the opportunity to buy us independently for what they paid us, they would have bought.

By Mr. Phillips:

Q. Your sale only amounted to your going into that company?

A. Of our stock going into that company. It amounted to my going out of it.

By Mr. Johnson:

Q. If they had made a stipulation that you would hold the American Sugar Refining Company's stock for a year, would you have thought of selling the Franklin out for stock in it?

A. No, sir; but I will tell you what I would have done, if it had been legal and they had made a stipulation I would have had to go out of the refining business the rest of my life, I would have sold to them because I wanted to get out of the business.

By Mr. Ralston:

Q. Did not Mr. Parsons say to you that his object in buy- | ing these (233) refineries was to obtain control of the Philadelphia markets?

A. No, sir.

Q. He did not say anything of that character?

A. I have no recollection of his having said that at all. He certainly never said it to us pending his negotiation with us.

Q. After his negotiation with you?

A. My impression, derived from him was, that it was a matter of consideration with them whether they would buy one, two or three refineries, with some doubt as to whether they could or would.

Q. Did he say anything about wanting to obtain control of the making of sugar in this city?

A. I think their object was to obtain that.

By Mr. Ingham:

Q. Did he say to you that the condition of the sugar trade was such that something ought to be done?

A. That was last year. He spoke generally with this savage competition, whether something could not be done in some way to remedy it.

Q. The competition was ruining the business?

A. The business was a disagreeable business under the existing competition.

Adjourned until Thursday, October 27th, 1992, at 4 o'clock P. M.

Thursday, October 27, 1892. Met pursuant to adjournment, and adjourned by agreement of counsel to meet January 10, 1893, at 3 P. M.

(234) *Tuesday, January 10th, 1893,* 3 P. M.

Present—Mr. Ingham and Mr. Ralston, United States District Attorneys;

Mr. McMurtrie, Mr. Wagner and Mr. Johnson, of counsel;

Mr. Beck, Examiner.

J. Vaughn Merrick, having been duly affirmed, was examined as follows;

By M. Ingham:

Q. Where do you reside?

A. Roxborough, Philadelphia.

Q. You were one of the principal stockholders of the Delaware Sugar House?

A. I was one of the stockholders.

Q. That was an incorporated company under the laws of the State of Pennsylvania?

A. It was.

Q. In the spring of 1892, who were the officers of that incorporation?

A. I was the president of the corporation: George R. Bunker was the manager, and the directors were William H. Merrick, George R. Bunker, Albert Bunker, I think a Mr. Howell, myself, George A. Bostwick and James H. Post.

Q. The owners of the capital stock of that corporation are correctly stated in the contract made with John E. Searles, Jr., which was made a part of the record by Mr. Wagner?

A. As far as I am aware they are.

Q. What was the capital stock of that corporation?

A. The capital was $210,000.

Q. How many shares were there?

A. There was $210,000 capital stock, two hundred and ten shares of $1,000 each.

Q. Who, on the part of the Delaware Sugar House, negotiated the sale of the stock of that company to John E. Searles, Jr.?

(235) A. No one approached the Delaware Sugar House to negotiate the sale of any of its stock. I as a stockholder was approached by one of the other stockholders.

Q. State who that was.

A. George R. Bunker, the manager of the Delaware Sugar House, asked me if I was desirous or willing to dispose of my stock.

Q. When was that?

A. I shall have to refer to the date of this agreement.

Q. The date of the agreement is March 8th, 1892.

A. It was some time in the month of February, 1892, I think a few days before the agreement which has been presented was executed.

Q. State in detail the circumstances under which you made the sale of your stock, and, so far as you know, how the other shares of stock of that company were sold.

A. The sale of my stock was in consequence of having been requested by Mr. Bunker to see whether I was willing to dispose of it at a reasonable price, and after considering the circumstances of the case, the condition of the refinery, and other circumstances which would affect its future prosperity, in my opinion, I came to the conclusion that I would dispose of my stock. The Delaware Sugar House was a corporation originally formed to refine or make molasses sugar several years before. It was a small establishment, but continued to manufacture molasses sugar until the action in regard to the change of rates in the tariff for sugar and molasses destroyed the business. At the time the sugar duty was removed, the duty on molasses remained, and the molasses houses were obliged to stop operations. Being confronted with that position of things we were called upon to say either whether we were going to abandon our capital or to place the concern in a position to manufacture refined sugar. The refinery was a small one and was not located favorably for the manufacture of sugar, because it was not on the water side and because its ground was circumscribed, and, | therefore, it was practically at the (236) mercy of the corporations which could manufacture sugar on a large scale and much cheaper. When, therefore, the opportunity arose by which stock in a concern which had a very risky future might be exchanged for a marketable stock I took everything into consideration and determined that I would sell my stock.

Q. Without reference to what the other stockholders did, or was it agreed that all the other stockholders should do so?

A. Without reference to what anybody did. My decision was formed on my own judgment and it was the sale of my own stock. When my brother William, who was in California, was applied to by me by telegraph to know if he desired to sell his stock on the terms which I had agreed to sell mine at, and he replied that he would. At that time he did not know on whose behalf I was applying, but simply gave his accession to the sale on the strength of his confidence in my judgment.

Q. Did you have any conversation with any one representing the American Sugar Refining Company in reference to this sale?

A. No, sir.

Q. You had no meeting with Mr. Searles at the time you transferred the stock?

A. I never met Mr. Searles up to this present day.

Q. Who acted on behalf of the American Sugar Refining Company?

A. George Bunker, our manager, was the only one whom I saw in regard to the matter. I think he made up his mind to sell when he found I was willing. I think that no one—that is, no one to my knowledge—representing either the Sugar Refining Company or Mr. Searles, ever appeared at all in the conferences that I had with Mr. Bunker. Certainly no one that I know was authorized to speak for Mr. Searles or for the American Sugar Refining Company.

Q. At the time you made this sale of your stock, you knew it was being transferred to the American Sugar Refining Company, did you not?

A. No, sir. We did not know the American Sugar Refining Com- (237) pany at all in the matter.

Q. Do you mean to be understood that at the time you signed this contract by which you agreed that you would exchange your stock for stock of the American Sugar Refining Company, subject to the condition that Mr. Searles should obtain the requisite assent to the increase of the capital stock of the American Sugar Refining Company before the sale was consummated, you had no knowledge that this contract was made for and on behalf of the American Sugar Refining Company?

A. We did not know. We were not informed that it was for the American Sugar Refining Company. The only person whom I heard mentioned was Mr. Searles, as I understood, the condition to which you refer was a condition by which Mr. Searles would have certain facilities placed at his disposal to effect or to complete the negotiation. We did not know in what capacity, however, he was going to get that stock.

Q. What did you understand by the eighth clause of your contract: "Mr. Searles, for account, as aforesaid, hereby agrees on the foregoing conditions to make the said exchanges, subject only to the condition that the requisite assent to the $25,000,000 increase of the capital stock of the American Sugar Refining Company be obtained?"

A. I did not understand anything special about it excepting it was the condition that Mr. Searles made for the transfer of the American Sugar Refining stock. We did not know who Mr. Searles was representing, whether he was representing a syndicate or whether he was representing himself or anybody else. In fact, I did not inquire. And I did not see the condition until the agreement to sell had been made.

Q. Did you not understand, when Mr. Bunker first spoke to you on (238) the subject, that you were exchanging your stock | in the Delaware Sugar House for stock in the American Sugar Refining Company?

A. Yes, sir; that was the proposition.

Q. And you knew that the American Sugar Refining Company was the company which represented the so-called Sugar Trust, did you not?

A. We might have known it. I did not draw any conclusions. The proposition was made to exchange my stock for certain marketable securities, which I could dispose of, or hold, as I pleased, whereas the stock which I was disposing of was stock which I could not dispose of, but which was a part of a concern which would either be transferred in bulk or not at all to anybody. Therefore, when the proposition came to me to exchange my stock for that of the American Sugar Refining Company I looked on it as a purely commercial transaction.

Q. Was there an offer made to purchase your stock without reference to obtaining the stock of the other stockholders in sufficient amount at least to control the Delaware Sugar House incorporation? Was the offer for your stock made for the stock by itself, or was there a condition that there should be a sufficient number of the stockholders to sell their interest to give Mr. Searles the controlling interest in the Delaware Sugar House?

A. When Mr. Bunker made this proposition to me he simply asked the question, "Are you willing to sell your stock in the Delaware Sugar House for securities of the American Sugar Refining Company." I was the holder of one-sixth of that stock, my brother was the holder of another sixth, and other members of the family and representatives of the estate of John E. Cope were the holders of another sixth; consequently we three together constituted the ownership of one-half of the corporation. Other persons who are mentioned in the agreement owned the other half. Mr. Bunker's question to me was, "Are you willing to sell your stock?" and for the reasons I have given I said I was willing. | Then he wanted (239) to know whether my brother William would sell his stock, and, as I said before, I telegraphed him to know whether he would, without stating the name of the corporation whose securities were to be given, but simply stating that they were marketable securities. I received from him a reply that if I was going to do it he would. The same query was put before the representatives of the estate of John E. Cope, and also before Mrs. Cope, who owned the balance of the one-half, and they gave their consent. There was no stipulation that the majority of the stock was to go, but I was simply asked the question whether I would dispose of my stock.

Q. Did you have any knowledge of the negotiations on behalf of the American Sugar Refining Company for the purchase of any of the other refineries in Philadelphia?

A. I had not. There was abundance of rumors in the newspapers, but I knew nothing.

Q. You had no personal knowledge?

A. I had no personal knowledge or communication with anybody connected with any of the other refining companies. Our sugar-house was really so small in its product that we were never taken particularly into consultation by any of the other large refineries, nor was I placed in a position to meet with any of them. I had nothing to do with the carrying on of the business further than being president of the corporation.

Q. Did I understand you to say you had never manufactured any sugar at the Delaware Sugar House after the first of April, 1891, until this sale was made?

A. I do not think I said that

Mr. McMurtrie: You said you had to go into this thing, but you never said whether you had gone into it.

The Witness: I might as well state then that when we were confronted with the alternative of shutting down the works entirely and sacrificing their value, or endeavoring to get something out of it, we put in additional capital | and changed the refinery from a molasses refinery to a sugar (240) refinery, and had conducted business with a fair degree of success for a year. I think it was at the beginning of the second season.

By Mr. Ingham.

Q. Then you were manufacturing sugar at the Delaware Sugar House at the time you made this sale to Mr. Searles, of your stock?

A. Only that the refinery was not in operation at that time because of the dead season. We had finished the season for 1891, and had not begun to manufacture sugar for 1892. There is usually a dead time towards the close of the year when the refineries are closed for repairs, or at least ours was.

Q. But your refinery was ready to take up the manufacture of sugar?

A. Nearly ready to take up the manufacture of sugar.

Q. What was the capacity of your refinery?

A. About five hundred barrels a day, and we were just putting in improvements which would enable us to turn out one hundred or two hundred barrels more, which was the extent of our capacity. In the first place, we had not room, and in the next place, we had not the water facilities which are necessary for refining, and the only way we could hope to compete at all was by increasing our product as much as we possibly could, so that the labor would be reduced to a minimum.

Q. Since the transfer of your stock and the stock of the other persons who were the owners of the stock of this Delaware Sugar House, have you any knowledge as to the condition of the property and how and by whom it was managed?

Q Not by personal visit, but I am aware of the fact that some sugars which were on hand at the time of the transfer were worked up. I think the refinery worked for about a month or more. Whether it has continued to work or not I cannot say, I have never been there.

(241) Q. Then you have no personal knowledge as to whether that refinery is now engaged in the manufacture of sugar or not?

A. I cannot say. I have never been there since the time of the transfer.

Q. To whom did you deliver the possession of the refinery.

A. I transferred my stock to Mr. Searles. I think the stock of the other parties, connected with us, was transferred to Mr. Searles. Whatever transfer might have taken place in regard to the property, must have been done by Mr. Bunker, our manager.

Q. He was authorized by the Delaware Sugar House, I suppose, the corporation, to make a delivery of the property?

A. Well, no sir; I cannot say that he was. The directors never had a meeting after the transfer of stock, We presumed—I do not know whether we were correct in so presuming—that we could no longer competently act as directors after having sold our stock, and the whole operation of transfer was simply a transfer of certificates of stock, so far as I know. That is to say, we transferred our stock to Mr. Searles and received his stock in exchange, and he became the stockholder instead of ourselves.

Cross-examined.

By Mr. Wagner.

Q. Excepting to the extent you have stated in acting for your brother, and in counseling and advising the representatives of your brother-in-law's estate, did you unite in any way with anybody in making this sale?

A. No, sir.

Q. So far as you and your interests were concerned it was somewhat of a family affair then, was it not? That is, you and your brother and your brother-in-law held it together?

A. My brother and my brother-in-law's estate and Mrs. Cope, who owned some in her individual right?

By Mr. McMurtrie. (242)

Q. She is your sister?

A. Yes, sir; she is my sister.

By Mr. Wagner.

Q. And the acquisition of the property dated back to what time?

A. I think it was about 1872 or 1873.

Q. Were you then engaged in business together?

A. Yes, sir; under the firm name of Merrick & Sons.

Q. Have you all since retired from business?

A. Yes, sir; and Mr. Cope died.

Q. And this was a matter which was not in your ordinary line of investments, and which it was rather desirable to dispose of if an opportunity occurred?

A. Decidedly.

Q. Was the stock at all a marketable one? Was it on the market in any way?

A. No, sir. Whenever any parties who were owners of the stock, desired to exchange or sell their stock, there was a provision in the articles of agreement by which that stock had to be offered to the others first, and as a matter of fact, the stock remained owned one-half in our family and the other half in the representatives of Mr. Birkbeck and of the Bunkers, those who originally went in with us.

Q. Then it was not a stock that was readily marketable?

A. Not at all.

Q. Or that was convertible into money at any time?

A. Quite the contrary.

Q. And in this matter in the line of your investments and investments for your brother-in-laws' estate, and your brother, your action was to get a marketable and safe security to take the place of the other?

A. Yes, sir.

By Mr. Johnson.

Q. The greatest good for the greatest number?

A. The greatest good for ourselves, at any rate. Well, as | a matter of (243) fact, as I have said, the refinery was not well located for refining. It was far from the river, side, we were restricted in our use of water, as Mr. Johnson will remember, when we transferred a portion of the ground to Spreckles and we could not enlarge the operations of the refinery to any great extent. We were not situated so that we could conveniently land our products or deliver our products by water, and everything had to be hauled.

By Mr. Wagner.

Q. But you had not, as I understand, any particular wish to continue in the manufacture of sugar?

A. None at all.

Q. Or to unite with others in the manufacture of sugar?

A. On the contrary, we wanted to get out of an operation which was very risky and which we felt had a very precarious future.

Re-examined.

By Mr. Ingham.

Q. What was the par value of the shares of the American Sugar Refining Company?

A. I think the par value is $100 per share. Yes, I know it is $100.

Q. By the terms of your agreement you received $2,200 for each $1000 which you had?

A. At the time of the transfer of our stock, the stock of the American Sugar Refining Company, which we were to receive in exchange, was selling, I think, about an average of eighty-eight and one hundred, so it practically made it a little under $2000 for $1000. But our stock did not represent at all the value that we had put into the concern. We had put in a good deal of our profits into the betterments for the refinery. So that while the par value of our stock was $210,000 the amount represented in the concern in improvements was considerably more than $210,000, and we did not regard it as being an excessively good price. (244) But we did feel that by | getting securities which we could place on the market, and sell in exchange for something which we could not sell, unless in bulk, we were doing a good thing for ourselves, and so far as I am concerned that was the only motive I had in the matter.

By Mr. Wagner.

Q. You had not divided your profits by any means?

A. Oh, no; a great part of our profits had gone into improvements.

Q, And enlargement of the plant?

A. Certainly. The enlargement of the stock which had been made, to which attention was called in my first answer, which I had omitted to mention, was only a partial representative of improvements we had just made and were making at that time in the value of the plant.

By Mr. Ingham.

Q. You regarded it as a fair sale, or you would not have made the sale?

A. Certainly, we regarded it as a fair sale: but in saying we regarded it as a fair sale we took into consideration the precarious nature of the business and the difficulty of disposing of the concern, either in whole or in part, as, on the other hand, against the facility with which we could dispose of the stock of a marketable concern.

Q. As a matter of fact, you transferred your stock at the par value of $1000 and received in exchange $2,200 for each $1000 of stock which you held in that company?

A. In stock. That stock was selling at eighty-eight on an average.

Q. You received $2200 par value, which would be the par value of the shares of the American Sugar Refining Company, for which you gave $1000 in the stock of the Delaware Sugar House?

A. Yes; but, as I have explained, that $2200 par value of the stock did not represent a market value. The market value of the stock was a (245) good deal less, and, on the other | hand, the $1000 of our stock did not represent at all the value of the money which had been put in. So that while it appeared to be a large price, it really was not.

By Mr. McMurtrie:

Q. Was there any condition expressed, implied or understood, when you made these sales as to the future conduct of the business?

A. No, sir.

Q. I refer particularly to an understanding that you would not build another factory or go on in the business.

A. There was not a word about it in any way.

Q. There was no understanding?

A. Not a particle of understanding or implication or anything else.

By Mr. Ingham:

Q. You say you telegraphed your brother in reference to the sale?

A. Yes. I and my brother had been engaged in business together for many years, and since we were in business we were in the habit of acting for each other in the absence of either. We depended a good deal on each other.

By Mr. Wagner:

Q. Were your relations such that you relied very largely on the judgment of one another in matters?

A. We did.

Q. One used to act in the absence of the other?

A. We did. Otherwise he would not have trusted me to have sold his stock for him.

In answer to Mr. Ingham the witness states that the telegram sent to his brother and the telegram received from him, which have been referred to, will be produced at the next meeting for the purpose of being offered in evidence by either party, if desired.

B. W. Andrews, having been duly sworn, was examined as follows: (246)

By Mr. Ingham:

Q. Where do you reside?

A. Woodbury, N. J.

Q. What business are you engaged in?

A. Wholesale grocer.

Q. What firm are you a member of?

A. B. W. Andrews & Co.

Q. How long have you been engaged in the business of wholesale grocer?

A. Since February 1st, 1862.

Q. Where is your place of business?

A. 10 North Front street, in Philadelphia.

Q. Are you a large dealer in sugar?

A. Not as large as some others.

Q. Are you a considerable dealer?

A. Yes, sir.

Q. Can you furnish me a statement showing the price of sugar on the fifteenth day of each month, from the 15th of April, 1891, up to the present time?

A. With one exception, I think. I can give you the 1st of February, 1891, the 1st of September, 1891, the 1st of February, 1892, and the 1st of September, 1892.

Q. What was it the 1st of February, 1891?

A. Six and a quarter cents.

Q. What price do you quote?

A. Our selling price.

By Mr. McMurtrie:

Q. Of course, this is all the same grade of sugar?

A. This is granulated sugar.

By Mr. Ingham:

Q. You are speaking now of granulated sugar?

A. Yes, sir.

Q. What was it in September, 1891?

A: Four and thirty-one hundredths.

(247) Q. What was it February, 1892?

A. Four and an eighth.

Q. How much September, 1892?

A. Five cents.

Q. Are you able to give the price of sugar during the other months of those same years?

A. I could at the store. Not here.

Q. Are you able to state about what was the fluctuation in price of granulated sugars during these past two years or year and a half, since the 1st of April, 1891?

A. I think the lowest price was four cents.

Q. When was that?

A. It sold at four cents previous to the 1st of April for the 1st of April delivery. Probably in February, 1891. It is sold in February and delivered in April.

Q. How long did that price continue at four cents?

A. A very short time in my recollection.

By Mr. McMurtrie:

Q. When was the price six and a quarter cents?

A. Sugars bought the 1st of April, 1891, and delivered that day, six and a quarter cents.

Q. Then before the 1st of April it sold at four cents?

A. It was sold by the refiners to be delivered on the 1st of April at four cents for a short period.

By Mr. Ingham:

Q. What was the highest price that sugar has reached during this same period?

A. Since the 1st of April, 1891? Five and three-sixteenths, I think.

Q. When was that price reached?

A. I should say September, 1892. That is all from memory.

Q. How long did that price continue?

A. Two or three weeks.

(Mr. Ingham asks the witness to prepare a statement showing the price of sugar during the period referred to, from the | 1st of April, 1891, on the 15th of each month, up to the present time inclusive, for use at the next meeting, and, if there were any unusual fluctuations, to make a memorandum of them also.) (248)

By Mr. Ingham:

Q. Since the 1st of April, 1892, have there been in the market any granulated sugars made by any other parties except by the refineries controlled by the American Sugar Refining Company?

A I think there have. There have been samples shown on the street, and I understood sugars were there, although we have not handled any of them.

Q. Where from?

A. From Europe.

Q. Is there any place either here or in New York where you can purchase granulated sugars that are manufactured in Europe, at a price at which they can be sold?

A. Yes, sir. You mean for immediate delivery?

Q. I mean for immediate delivery?

A. None that I know of.

Q. Prior to that date was there a competition between the refineries operated by the American Sugar Refining Company and independent refineries?

A. Yes, sir.

Q. At the present time is there to your knowledge, in the granulated sugar market, any competition whatever with the American Sugar Refining Company?

A. No.

Q. Who fixes the price that is paid by wholesale grocers for granulated sugar at the present time?

A. Each refinery has a salesman who fixes the prices, so far as we know.

Q. That is, you mean to say that so far as your present knowledge goes, the price is fixed by the refinery?

A. By the salesman of the refinery.

Q. Who is the salesman of the Franklin Sugar Refining Company? (249)

A. John Rogers, I think.

Q. Is he the person who fixes the price?

A. So far as my knowledge goes.

Q. Who is the salesman of the Spreckels Refinery?

A. Mr. Mears.

Q. So far as your knowledge goes, does he fix the price?

A. Yes, sir.

Q. Have you not knowledge that the price is fixed by the American Sugar Refining Company at New York?

A. No, sir.

Q. When you purchase sugar from a refinery operated by the American Sugar Refining Company, do you, in certain cases, obtain a rebate on the price at which it is billed to you?

A. Yes, sir.

Q. Is that rebate given to you on your signing a certificate, which accompanies the bill, to the effect that you have not disposed of any sugar at a less price than the price fixed by the American Sugar Refining Company?

A. There is nothing said about it when the sugar is purchased.

(Paper marked "Ex. D, Jas. M. Beck, Jany. 10, '93, shown witness.)

Q. Is that one of the statements and certificates on which you receive a rebate?

A. Yes, sir.

Q. Have you in your possession one of the equality rate-books referred to in this paper?

A. Yes, sir. (Producing book.)

Q. The rate book which you have shown me states that it is for Maryland, Delaware and Washington, D. C. Are rate-books issued covering the territory which is named on the back of the rebate certificate?

(250) A. New York, New Jersey, Pennsylvania, Virginia and North Carolina I have seen.

Q. So far as your knowledge goes those are the States of which you have seen the books?

A. I have seen the books: yes.

Q. But you have no knowledge that equality books are not issued for the other States mentioned on the back of the certificate?

A. No, sir.

Q. These names on the back of the certificate refer to the States in which the equality rate-books are issued?

A. It refers to that, but in point of fact they are not all working under it. Only a portion of them.

Q. The equality rate-books are issued for the instruction of the salesmen who represent the different grocery firms, are they not?

A. They are issued by the Grocers' Association for the salesmen.

Q. The equality rate-books cover the prices which are to be given or offered by the salesmen representing the different grocers? Is that the idea?

A. No; they have nothing to do with the prices. That is, they do not regulate the prices. They regulate the freight which the price must be added to in the town the salesman is in.

Q. But in the equality rate-book, in the instructions to salesmen, it is said that the lowest selling price for sugar at all points named in this pamphlet and for towns receiving sugar at those respective points will be the American Sugar Refining Company's card price on day of sale, to which must be added to each one hundred pounds the amount standing opposite said points where sugars are delivered. That is, the salesmen must make their sales according to the price for that day as regulated and established by the American Sugar Refining Company? That is what that equality book means, does it not?

A. That equality book is probably an error in printing because it is (251) not followed out in that way. The Grocers' Association furnishes the prices to the salesmen.

Q. They furnish the price which is furnished them by the different refineries operated by the American Sugar Refining Company, do they not?

A. Yes, sir.

Q. So that, as a matter of fact, the price of sugar to the retail grocer is controlled on the day on which the sugar is sold by the price fixed by the American Sugar Refining Company on that day?

A. Yes, sir.

(The equality rate-book referred to is marked "Ex. E. Jas. M. Beck, Jany. 10, '93," and is offered in evidence on behalf of the Government.

Mr. Ingham also offers in evidence on behalf of the Government the rebate certificate heretofore marked "Ex. D.")

By Mr. Ingham:

Q. Do the other refineries with which you deal, which are operated by the American Sugar Refining Company, also allow a similar rebate on a similar certificate to that issued by the Franklin Refining Company?

A. Yes, sir.

By Mr. McMurtrie:

Q. How old is that form of certificate?

A. I think, so far as I know, there is no later one than this.

Q. How old is that form?

A. Probably ninety days.

By Mr. Ingham:

Q. You say that form is ninety days old?

A. I should say about that, from memory.

(Paper marked "Ex. F. Jas. M. Beck, Jany. 10, '93," shown witness.)

Q. This paper, marked "Ex. F," which I show you, was the form of certificate under which you obtained the rebate | prior to the issuing of (252) the form which has just been offerred in evidence, was it?

A. Yes, sir.

Q. And that is similar in character to the form of certificate of rebate, which was issued by all the refineries controlled by the American Sugar Refining Company, so far as you have knowledge?

A. Yes, sir.

(Mr. Ingham offers in evidence on behalf of the Government the certificate marked "Ex. F," referred to.)

Q. At the present time is the price of sugar absolutely in the control of the American Sugar Refining Company so far as it relates to granulated sugar or sugars No. 16, Dutch standard and color?

A. It would be for a short period.

Q. I ask you is it at the present time in their control?

A. It is to-day.

Cross-examined.

By Mr. Johnson:

Q. How many refineries issued the form of rebate which you last produced before the shares of the Franklin Sugar Refinery, as you learned from the newspapers, were sold and purchased by the American Sugar Refining Company?

A. This last form has only been used a very short time.

Q. That is, the one you produced last?

A. There were none issued to us here. In New York they were issued.

Q. And you were endeavoring to procure the same in this city?

A. We were.

Q. That is, the grocers?

A. Yes, sir.

Q. And it was in compliance with your request, because you thought (253) it would promote the good of the grade trade, that | the rebate system was extended to Philadelphia? Is not that so?

A. We have been working on it, I think, three or four years. Pretty actively for the last three years.

Q. What, in your judgment, is the effect to the public generally of this rebate system? Is it good or bad?

A. Good.

By Mr. Ingham:

Q. Do you mean to the public or the wholesale grocers?

A. The public.

By Mr. Johnson:

Q. About how long, if the price of domestic refined sugars were put up to anything like approaching an extortionate price, would it be before the country would be flooded with foreign sugars?

A. They could be brought here in from two to three weeks.

Q. And when you say "to-day," you mean it would require sufficient time to get the foreign supply here?

A. Yes, sir.

Q. As it is, the price of American refined sugar is kept so low that the foreigners cannot afford to sell as cheap?

A. They cannot afford to sell granulated sugar.

Q. But if there were an attempt to put up the price of granulated sugar here, then the foreigners could and would put their sugars in the market?

A. Yes, sir.

Q. You have been asked something about the price of sugar. It is a mighty uncertain commodity and has been during your whole experience, has it not?

A. There have been a good many fluctuations in it.

Q. And the price of granulated sugar to-day as compared with what it was three years ago, what would you say as to that? I do not mean accurately to the fraction, but give a general idea of the course of prices.

A. The 1st of February, 1889, seven cents. 1890, six and a half.

Q. Therefore, has it been your experience that the changes which have taken place in the sugar market have operated against the public or in their favor? (254)

A. In favor of the public.

Re-examined.

By Mr. Ingham:

Q. Between 1890 and the present time there has been a reduction of the tariff of about two cents a pound on sugar, has there not?

A. It varied according to the grades of the sugar.

By Mr. Johnson:

Q. Take this granulated sugar on which you quote the price on the 1st of February, 1890, 1891 and 1892, about what difference has the tariff made in it?

A. Take February 1, 1889, it was seven cents. It is four and seven-eighths to-day.

Q. The tariff was lowered on that. Do you know about what difference it made?

A. No; I can't tell you the tariff.

By Mr. McMurtrie:

Q. Was there ever a change of duty as high as two cents on what you called raw sugar intended for manufacture?

A. Yes, sir.

By Mr. Ingham:

Q. It has been as high as two twenty?

A. Yes, sir.

Q. You say the price on the 1st of February, 1891, was six and a quarter cents, and for 1st of April delivery four cents?

A. It has been down to four cents two or three times since then.

Adjourned until Wednesday, January 18th, 1893, at 3 o'clock P. M.

Wednesday, January 18th, 1893, 3 P. M. (255)

Present—The Examiner, Mr. Beck;
Mr. McMurtrie, Mr. Wagner, Mr. Johnson, of counsel;
United States District Attorneys Ingham and Ralston.

B. W. Andrews, recalled.

By Mr. Ingham:

Q. At the last meeting you were requested to produce a statement showing the price of granulated sugars as sold by you in the city during the period from April 1st, 1891, up to January 15th, 1893. Have you that statement?

A. Yes, sir.

The statement referred to is as follows:

Selling Prices for Granulated Sugars by B. W. Andrews & Co.

April 1st, 1891—4.5-8c.
May 1st, 1891—4.5-8c.
June 1st, 1891—4.1-4c.
July 1st, 1891—4.1-4c.
August 1st, 1891—4 3-16c.
Sept. 1st, 1891—4.31c.
Oct. 1st, 1891—4.3-8c.
Nov. 1st, 1891—4.1-8c.
Dec. 1st, 1891—4.3-16c.
January 1st, 1892—4.1-16c.
February 1st, 1892—4.1-8c.
March 1st, 1892—4.1-8c.
April 1st, 1892—4.3-8c.
May 1st, 1892—4.3-8c.
June 1st, 1892—4.3-8c.
July 1st, 1892—4.3-8c.
August 1st, 1892—4.44c.
Sept. 1st, 1892—5c.
Oct. 1st, 1892—5.3-16c.
Nov. 1st, 1892—5c.
Dec 1st, 1892—4.7-8c.
January 1st, 1893—4.7-8c.

April 15th 1891—4.5-6c.
May 15th, 1891—4.1-8c.
June 15th, 1891—4.1-8c.
July 15th, 1891—4.31c.
August 15th, 1891—4.1-4c.
Sept. 15th, 1891—4.31c.
Oct. 15th, 1891—4.3 8c.
Nov. 15th, 1891—4.1-8c.
Dec. 15th, 1891—4.1-16c.
January 15th, 1892—4.1-16c.
February 15th, 1892—4.1-6c.
March 15th, 1892—4.31c.
April 15th, 1892—4.3-8c.
May 15th, 1892—4.3-8c.
June 15th, 1892—4.3 6c.
July 15th, 1892—4.44c.
August 15th, 1892—4.56c.
Sept. 15th, 1892—5.3-16c.
Oct. 15th, 1892 -5c.
Nov. 15th, 1892—4.7-8c.
Dec. 15th, 1892—4.7-8c.
January 15th, 1893—4.7-8c.

(256) *John E. Searles Jr.*, having been duly sworn, was examined as follows:

By Mr. Ingham:

Q. Where do you reside?

A. Brooklyn, N. Y.

Q. Are you an officer of the American Sugar Refining Company?

A. I am secretary and treasurer.

Q. The American Sugar Refining Company was organized in January, 1891, under the laws of the State of New Jersey, as a corporation of the State of New Jersey, with its head-quarters at Jersey City?

A. It was; yes, sir.

Q. When did the American Sugar Refining Company begin business?

A. January 10th, 1891.

Q. Were you formerly connected with the Sugar Refineries Company of New York?

A. I was.

Q. In what capacity were you connected with that company?

A. As its secretary and treasurer.

Q. When was that company organized?

A. In October, 1887.

Q. Briefly state what was the plan of its organization, how it was organized, how it was composed and how governed.

Mr. Johnson: I ask the District Attorney to state on the notes for what purpose pertinent to any issue raised by the pleadings he asks the question.

Mr. Ingham: We expect to show that the Sugar Refineries Company was a corporation organized under the laws of the State of New York, by which a number of corporations controlling sugar refineries were merged into one, and that this Sugar Refineries Company was the owner of a considerable number of refineries, which were transferred, after the action of the courts of New York in reference to the | Sugar Trust to (257) the American Sugar Refining Company. It is all for the purpose of establishing the facts set forth in the bill.

Mr. McMurtrie:—Is there a word in the bill that even covers those events in point of time, much less in point of fact?

Mr. Ingham:—We regard it as a material part of our proof.

(Mr. Johnson says that in the great anxiety of the defendants to vindicate themselves by an early hearing, and his desire that the proceedings shall not be postponed by going into irrelevant inquiries, he instructs the witness to answer no questions with regard to the organization of any old company or any other company than the American Refining Company, defendant in this bill.)

By Mr. Ingham:

Q. You decline then to answer that question under instructions from your counsel?

A. I do.

Q. Was the American Sugar Refining Company the successor of the Sugar Refineries Company? Was it organized for the purpose of taking the property of the Sugar Refineries Company and carrying on the business which had heretofore been conducted in the name of the Sugar Refineries Company?

(Mr. Johnson instructs the witness not to answer any question as to the objects of the corporation other than those which are disclosed by its articles of association.)

By Mr. Ingham:

Q. Do you obey those instructions?

A. Yes, sir.

Q. What was the amount of the capital stock of the American Sugar Refining Company?

A. $50,000,000.

Q. Was that divided into preferred and common stock?

A. One-half each.

Q. What was the difference between the stock which you call preferred (258) and that which you call common?

A. The preferred stock was preferred in the sense that the first earnings were to be appropriated to pay the dividends on that stock to the amount of seven per cent. per annum. No dividends could be paid on the common stock until that had first been provided for.

Q. Was that stock all issued, the $50,000,000?

A. It was.

Q. Has the amount of your capital stock been increased?

A. It has.

Q. To what extent?

A. By $23,560,000.

Q. When was that increase made?

A. It was made in March, 1892.

Q. How was the $23,560,000 divided between common and preferred?

A. One-half each.

Q. And was there a resolution passed by the board of directors of the American Sugar Refining Company authorizing this new issue of capital stock?

A. Yes, sir.

Q. Can you furnish me with a copy of that resolution?

A. I can do so.

Q. Can you do so to-day?

A. I cannot to-day.

Q. You will furnish a copy of that resolution?

A. I will furnish such copy.

Q. You will produce that at a future meeting in this case?

A. I will forward it through Mr. Johnson.

Q. What corporations were transferred to the American Sugar Refining Company at its organization by the Sugar Refineries Company?

A. There were no corporations transferred.

Q. What refineries?

A. There were refinery properties. Do you want a list of the refinery properties?

(259) Q. I would like to have such a list; yes?

A. The Havemeyer & Elder Company; The Brooklyn Sugar Refining Company; The Havemeyer Sugar Refining Company; The Dick & Meyer Company; The Oxnard Bros. Company; The Moller & Sierck Company; The DeCastro & Donner Company; The F. O. Matthison & Weichers Company; The Standard Refining Company.

Q. And the North River Sugar Refining Company?

A. The North River Company; yes.

Q. There are two refining companies in the name of the Havemeyer Sugar Refining Company, one in Brooklyn and one in Jersey City. Were both those transferred?

A. Those were included in my answer as to the Havemeyer Sugar Refining Company.

Q What refineries in Boston were transferred?

A. The Standard Sugar Refinery, the Bay Street, the Boston and the Continental.

By Mr. Johnson:

Q. The properties of all those companies were transferred?
A. The properties of all those companies were transferred.

By Mr. Ingham:

Q. Was there one in Portland, Maine?
A. The Forest City Company, in Portland, Maine; the St. Louis Sugar Refining Company, in St. Louis; the Planters'-Sugar Refining Company, in New Orleans, and the Louisiana Sugar Refining Company, in New Orleans.
Q. Any in San Francisco?
A. No, sir; not at that time.
Q. The American Sugar Refining Company in San Francisco was owned by Havemeyer & Elder, virtually under the management of the Sugar Refining Company, was it not, and the management transferred to the American Sugar Refining Company?

(The witness is instructed not to answer so much of the question as
asks under what management said company previously was, but is not
instructed not to answer the question | so far as it requests him to say (260)
whether the management was transferred to the present Sugar Refining
Company?

The Witness:—Do I understand your question to relate to the time of the organization of the American Sugar Refining Company?

Mr. Ingham:—Yes; I was asking you with reference to the transfers made.

A. There was no transfer of any California property at that time.

By Mr. Ingham:

Q. Since the organization of the American Sugar Refining Company has there been a transfer made to it at any time of the American Sugar Refining Company, of San Francisco, Cal.?
A. There has.
Q. When was that transfer made?
A. It was made during the year 1891.
Q. After the transfer of this California refinery to the American Sugar Refining Company, what refineries, independent of the American Sugar Refining Company, were in the United States?
A One in New Orleans and one in Texas.
Q. What was the one in New Orleans?
A. The Henderson Refinery.
Q. What was the capacity of that refinery?
A. I do not know its exact capacity. I think they make about one hundred thousand pounds daily.
Q. How much would that be in barrels?
A. I think their capacity in barrels is from three hundred to four hundred barrels a day. Another in Texas, I have forgotten just the name of the place, a refinery of about the same capacity. It is a place

near Galveston, I have forgotten the name. Four refineries in Philadelphia, the Revere Sugar Refinery in Boston, and the Baltimore Sugar Refinery.

Q. What about the California Refinery?

A. The California Sugar Refinery also, owned by Mr. Spreckels.

(261) Q. Can you furnish me with a copy of the annual statements and reports of the officers of the American Sugar Refining Company for the years 1890, 1891 and 1892?

A. There was no report for 1890. I can furnish you the copies of 1891 and 1892.

Q. When was the report for 1892 issued?

A. The report for 1892 was issued last week.

Q. You will furnish that?

A. Yes, sir.

Q. What was the capacity, if you know, of the Revere Sugar Refining Company, at Boston?

A. About one thousand barrels per day.

Q. By the transfer of these refineries to the American Sugar Refining Company, do you mean the transfer of the stock?

A. Of the properties.

Q. Of the properties themselves?

A. Of the properties themselves.

Q. Is that true in all of the cases of the refineries you have mentioned?

A. It is.

Q. So that the American Sugar Refining Company has an absolute ownership in the properties?

A. An absolute ownership. They own the title.

Q. Since January 10, 1891, the date of the organization of the American Sugar Refining Company, what other refineries have been purchased, either outright or in which you have obtained a controlling interest in the stock up to the present time?

A. In addition to the American Refinery of San Francisco, it has already been stated that we have purchased the capital stock of the four Philadelphia Refineries and the controlling interest in the capital stock of the Baltimore Refinery.

Q. What is your relation now to the Spreckels Refinery in California?

(262) A. The California Refinery is under a lease to a company, | in which the American Sugar Refining Company is a stockholder.

Q. What is the name of the company?

A. The Western Sugar Refining Company.

Q. Who are the officers of the company?

A. The officers are Mr. Claus Spreckels, Mr. Robert Oxnard and Mr. A. B. Spreckels.

Q. What amount of stock of the Western Refining Company is owned by the American Sugar Refining Company?

A. One-half of it.

Q. Exactly one half?

A. Just one-half.

Q. When was the arrangement completed by which the Western Sugar Refining Company leased the California Sugar Refining Company?

A. I think it was in the spring of 1891.

Q. Can you give about the time in the spring?

A. No; I am mistaken. The spring of 1890.

Q. When the Western Sugar Refining Company organized?

A. At that time.

Q. Where?

A. In California.

Q. Who owned the other half of the capital stock of the Western Sugar Refining Company?

A. Messrs. Spreckels.

Q. Was the Western Sugar Refining Company organized with the understanding that it would take a lease of the California Company?

A. It was.

Q. Has it the lease af any other sugar refinery?

A. It has the lease of the American Sugar Refinery?

Q. What are the terms of the lease between the Western and the California and the American Companies?

A. They are leased under a rental. I do not remember the | exact (263) amount of the rental The two properties are rented by the Western Sugar Refining Company, they paying a consideration in the way of rental.

Q. How long has the lease to run?

A. I think ten years.

Q. Can you furnish me with a copy of those leases?

A. I cannot.

Q. Who has charge of the leases?

A. The Western Sugar Refining Company.

Q. Where is the office of the Western Sugar Refining Company?

A. In San Francisco.

Q. Who conducted the negotiations which terminated in the organization of the Western Sugar Refining Company and the lease of the two California refineries to it? Who conducted the negotiations on behalf of the American Sugar Refining Company?

A. Those negotiations were not conducted on behalf of the American Sugar Refining Company. They were negotiations which were made by Havermeyer and Elder, prior to the organization of this company, which was subsequently acquired by the American Sugar Refining Company.

Q. Can you give the date of the transfer of the one-half of the stock Western Sugar Refining Company to the American Sugar Refining Company?

A. I have not that date at hand.

Q. Do you know the amount of the capital stock of the Western Sugar Refining Company?

A. Yes, sir. The capital stock is $1,000,000.

Q. Who conducted the negotiations on behalf of the American Sugar Refining Company, through which the purchase of the capital stock of the E. C. Knight Company, of this city, was made?

A. I did.

(264) Q. Under what authority did you act which authorized | you to make that purchase? By what authority were you acting for the American Sugar Refining Company?

A. The negotiations which I conducted were under authority of the board of directors of the American Sugar Refining Company.

Q. By a resolution of the board of directors?

A. I think by a direct resolution.

Q. Will you give me a copy of that resolution?

A. Yes, sir; if there is one. My impression is there is a resolution.

Q. What was the beginning of these negotiations?

A. The beginning was a general conversation on the subject of the sugar refining business.

Q. With whom?

A. Mr. Knight.

Q. Whereabouts?

A. I could scarcely answer that question, as there had been during a year frequent conversations on the subject, or occasional conversations; so that I can scarcely say when they commenced.

Q. About what time did they commence?

A. I had conversations with Mr. Knight during fully one year previous to the time the negotiations were completed?

Q. Do you know about the date when you were authorized by the American Sugar Refining Company to conduct those negotiations?

A. In the absence of the record I could not tell definitely what the date of the organization was.

Q. I do not mean with exactness; but about the date.

A. I should presume some time in February, 1892.

Q. State what was said in substance between yourself and Mr. Knight with reference to the condition of the sugar business, which you say was the beginning of the negotiations.

A. Mr. Knight had expressed himself as very much dissatisfied at the (265) results of his business, whereupon I suggested | the query whether he would not like to sell his property, and that resulted in a conference as to the value of his property, lasting during several interviews and finally in an agreement as to the price at which he would sell it.

Q. Do I understand that you were practically negotiating for the purchase of his property during the year 1891?

A. Yes, sir.

Q. But that you had not reached a point yet where you thought it was necessary to be authorized by the board until some time in the winter of 1892?

A. That is correct.

Q, Who conducted the negotiations for the Delaware Sugar House?

A. I did.

Q. Can you state the circumstances under which you purchased the capital stock of that company?

A. I had an interview with Mr. Bunker, who was the manager of the company, with a view of ascertaining whether his company wished to dispose of their property, and as the result of some conference, which lasted during two or three interviews, he finally communicated his disposition to sell it, and we agreed finally on a price at which the American Sugar Refining Company would buy and he would sell.

Q. When were you negotiating with Mr. Bunker?

A. I should say during a month previous to the purchase of the property; during the month of February, the latter part of February and the early part of March.

Q. You had no conversation with him with reference to a sale of that property prior to the winter of 1892?

A. No, sir.

Q. Who conducted the negotiations for the purchase of the Spreckels Sugar Refinery?

A. I did.

Q. With whom did you negotiate to purchase the capital stock of that company?

A. With Mr. Claus Spreckels.

Q. At what time did you first approach him on the subject of buying his stock (266)

A. It was soon after his return from Europe, I do not know the exact date. I should say probably the middle of February, 1892. It may have been earlier than that, I am not certain about that.

Q. Where did you first meet him?

A. I think in Philadelphia at his house; at his rooms.

Q. Was that the first you had ever spoken to him on the subject?

A. No, sir; I had frequent conversations with him on the subject, or occasional conversations, during the year 1891.

Q. State what was the substance of those conversations with reference to the desirability of his selling and your buying his property, or of a consolidation of your interests?

A. It was simply with a view to ascertaining a price at which he would prefer to sell his property, rather than attempt to conduct the business in Philadelphia.

Q. Did you conclude your negotiations at the first interview at his house?

A. No, sir; I had several interviews with him.

Q. Can you state the substance of the conversation at your first interview at his house?

A. No, sir; there were so many conversations with him so that it would be impossible to recall the details.

Q. The result of the negotiations was that he did fix a price at which he would be willing to sell?

A. It was. That was the result.

Q. When did you finally come to an agreement for the purchase of his stock?

A. All the stock was turned over.

Q. And in that negotiation at no period was there any written agreement entered into between yourself and Mr. Spreckels?

A. None whatever.

(267) Q. When did you take possession of the Spreckels Sugar Refinery?

A. The business was conducted by Mr. Spreckels' son and the staff, without any change for some little time after the transfer of the stock. I could not say for just how long. I should say for a month or two, but I am not certain as to the length of time.

Q. Conducted under your direction and for you, I suppose?

A. Without any change. For the account of the then stockholders.

Q. For account of the American Sugar Refining Company?

A. Yes, sir.

By Mr. Johnson:

Q. For account of the Spreckels Sugar Refining Company?

A. For account of the Spreckels Sugar Refining Company, the American Sugar Refining Company being stockholders. It was all done by the Spreckels Sugar Refining Company.

By Mr. Ingham:

Q. Who conducted the negotiations for the purchase of the Franklin Sugar Refinery?

A. I did not.

Q. Do you know who conducted those negotiations?

A. They were conducted by Mr. Parsons.

Q. I suppose the resolution which authorized you to act for the American Sugar Refining Company in purchasing the capital stock of the Knight Company also authorized you to act for the purchase of the other companies, the Delaware and the Spreckels, if there was such a resolution?

A. If there was such a resolution it was a general one, I think, giving me general authority.

Q. Was your authority to purchase confined to the refineries you bought, or did you have a general authority to buy any refinery you could that was competing with the American Sugar Refining Company?

A. I am not certain as to the language of the resolution.

(268) By Mr. Johnson:

Q. Or are you certain there was any?

A. If there was one.

By Mr. Ingham:

Q. You cannot state what your authority was without reference to the resolution, I suppose?

A. I cannot.

Q. You did not conduct the negotiations for the purchase of property to this very considerable amount, without the authority and consent of the directors of the American Sugar Refining Company? You were not acting on your own responsibility?

A. No, sir.

Q. Then can you not give us the general effect of the authority you were working under?

A. If there is a resolution authorizing it I propose to produce the resolution. That is all I can do.

Q. If there is not a resolution you will produce yourself the second time?

A. I will produce myself the second time; yes, sir.

Q. Who conducted the negotiations which resulted in obtaining the control of the Baltimore Sugar Refining Company?

A. I did.

Q. In that case did you purchase the property oughtright or did you buy the capital stock?

A. I puchased the capital stock.

Q. Did you get all the capital stock?

A. No, sir.

Q What proportion did you get?

A. About two-thirds of it.

Q. From whom did you buy that stock?

A. From an agent. That is, I employed an agent to buy it.

Q. Can you give us the name of that agent?

A. If it is necessary to do so, I can. There may be business reasons why it may be preferable not to do so, unless it is material.

Q. I will defer asking that question for the present. When did you (269)
commence negotiations for the purchase of that stock?

A. In 1891.

Q. About what time in 1891?

A. I should think in the late summer or early autumn of 1891.

Q. When was the purchase completed?

A. Not until 1892.

Q. What time in 1892?

A. I should say in March is my impression.

Q. Was there any agreement in writing in reference to that sale?

A. None whatever. I think I will change that date of March for January. I am not certain, however, as to the date.

Q. What sugar refineries are now in operation in the United States which are not controlled by the American Sugar Refining Company, or in which they do not have such an interest that it amounts to a friendly understanding by which there is no competition?

A. The absolutely independent refineries are the Revere Refinery, in Boston; the Henderson, in New Orleans; and the Texas Refinery.

By Mr. McMurtrie.

Q. That is, at the present time?

A. At the present time.

By Mr. Ingham.

Q. The Texas Refinery is such an unimportant one that you do not know the names of the owners or the town in which it is situated?

A. It is quite an important refinery, but I do not recall the name. The Cunningham Refinery is the name.

Q. Can you tell us where it is located?

A. Near Galveston. It is on a branch of the main line from Galveston. It is at the sugar place called Sugar Lands. It is the Cunningham Refinery, at Sugar Lands, Texas.

(270) Q. Can you state with exactness the capacity of that refinery?

A. I cannot with exactness. My impression is it is about the same as the Henderson Refinery.

Q. Three hundred or four hundred barrels a day?

A. Yes, sir. You asked for a list of the independent refineries that were in operation.

Q. Absolutely.

A. Let me add also the Mollenhauer, Refinery, in Brooklyn.

Q. How large a refinery is that?

A. About two thousand barrels per day, it is claimed. I do not know personally their exact production, but they claim to have a capacity of two thousand barrels per day.

Q. What is the daily capacity in barrels of the refineries operated or controlled by the American Sugar Refining Company, which you have mentioned? Outside of the independent refineries you have named the rest of the refineries in the United States, as I understand, you either own absolutely or own a controlling interest in. What is the capacity?

A. I think the capacity is about forty thousand barrels a day.

Q. Is it not more than that?

A. I think that is about the product of the refineries.

Q Is the capacity of the Havemeyer & Elder Sugar Refinery, in Brooklyn, about eight thousand barrels daily?

A. Yes, sir.

Q. Is that working at the present time?

A. It is.

Q. Is the capacity of the DeCastro & Donner Sugar Refinery, in Brooklyn, about three thousand barrels per day?

A. That refinery is not working.

Q. Is that its capacity?

A. About that; yes.

Q. How long has that refinery been closed?

A. For a year and a half.

Q. It has been closed for a longer period than that, has it not?

(271) A. I think not. I think it was run a year ago last summer.

Q. The reason I state that is because this report of Willet & Gray shows that it was not working in February, 1891?

A. It would not be working in February in any event, but we require about one-half more capacity in the summer time than in February; consequently there is only about two-thirds of the capacity running at this time of the year, because there is no consumption for it.

Q. The Brooklyn Refinery has a capacity about three thousand barrels a day?

A. Yes, sir.

Q. Is that working?

A. It is.

Q. What is the capacity of the Dick & Moyer Refinery?
A. That has no capacity. It was destroyed by fire.
Q. And has not been rebuilt?
A. And has not been rebuilt.
Q. Do you own that refinery, or do you own the stock of that refinery?
A. We own the property, what there is left of it.
Q. Was there any stock issued?
A. There is no stock. There is no such company.
Q. There was no such company?
A. There is no such company.
Q. Was there any such company?
A. There was.

Mr. Johnson:—We instruct you not to answer that.

By Mr. Johnson:

Q. That is one of the properties that was transferred?
A. That is one of the properties; yes, sir.

By Mr. Ingham:

Q. To your knowledge was the Dick & Moyer Company a corporation by which stock was issued at any time?

Mr. Johnson:—We instruct the witness not to answer unless the inquiry is confined to what took place after the American Refining Company acquired the property of the Dick & Moyer Refinery,

Mr. Ingham:—I propose to ask this witness in reference to the Dick (272) & Moyer Refinery and request him to state whether that company ever issued shares of stock, whether those shares of stock were ever owned by the Sugar Refineries Company or the American Sugar Refining Company, and whether any arrangement was made by which the stock was taken in and cancelled, but by which any amount in dividend is still paid to the persons who originally held that stock.

Mr. Johnson:—We instruct the witness to answer any question as to any arrangement with the American Sugar Refining Company concerning the Dick & Moyer Company, but instruct him not to answer anything occurring before the American Sugar Refining Company's acquisition.

By Mr. Ingham:

Q. Do you obey your instructions?
A. Most obediently.
Q. Is the Dick & Moyer Refinery earning anything at the present time for its owners?
A. The refinery, as I stated, was destroyed by fire, and hence has no earning capacity.
Q. I ask you if it is earning anything for its owners?
A. The real estate is, I think, being utilized and an income is received from it.

Q. Is there any amount whatever received for the Dick & Moyer Refinery from the proceeds of the sales of the sugar by the American Sugar Refining Company?

A. None whatever. They have no refinery. It takes a refinery to get an income from sugar.

Q, Has the Havemeyer Sugar Refinery, of Brooklyn, a capacity of about thirty-five hundred barrels per day?

A. That has a larger capacity than that.

Q. What capacity has it?

A. A capacity of nearly five thousand barrels.

Q. Is that working?

A. Not at present.

Q. How long has it been idle?

(273) A. That refinery has been rebuilt. It was destroyed by fire and has been rebuilt.

Q. When was it destroyed by fire?

A. It was destroyed by fire in 1887.

Q. When was it rebuilt?

A. It was rebuilt and ran for a part of the year 1891, but improvements and additions have been put on it, and it has been idle pending the completion of these improvements.

Q. What is the capacity of the Havemeyer Sugar Refinery, in Jersey City?

A. There is no such property in Jersey City. There is a property there, a part of the F. O. M. & W. Refinery, that I presume you allude to. It is included in the capacity of the M. & W. Refinery. It is a part of that plant.

Q. It is a part of the Mattheison & Weichers Refinery?

A. Yes, sir.

Q. What is the capacity of that?

A. About five thousand barrels. Between five thousand and six thousand barrels.

Q. Is that working?

A. It is.

Q. What is the capacity of the Moller & Sierck Company?

A. That property is not in operation.

Q. Is it dismantled?

A. The property has recently been disposed of. It was dismantled. The machinery was removed to other refineries.

Q. That property was situated in Brooklyn?

A. Yes, sir.

Q. When was it dismantled?

A. During the year 1891 and 1892.

Q. What is the capacity of the North River Sugar Refinery, of New York, or is it dismantled?

A. That has had no capacity since it has been owned by the American Sugar Refining Company. It was in the hands of a receiver. The (274) property has been condemned for a pub- | lic park and is under an award by the City now, and it has not come to a settlement.

Q. When was it dismantled?

A. It has not been dismantled.

Q. Not yet?

A. Not entirely. There has been no dismantling of it since it became the property of the American Sugar Refining Company.

Q. Was it dismantled before it came into your possession?

A. Partially.

Q. It was not working when you got it?

A. No, sir.

Q. How about the Oxnard Brothers Company, of Brooklyn?

A. That company is not in operation.

Q. Is that refinery dismantled?

A. It is. Partially so.

Q. When was that dismantled?

A. During the last three years.

Q. Before or after you purchased it?

A. Partially before and partially since.

Q. What is the capacity of the Standard Sugar Refining Company, of Boston?

A. About six thousand barrels.

Q. Is that refinery working?

A. It is.

Q. What is the capacity of the Boston Sugar Refinery, of Boston?

A. About three thousand barrels.

Q. Is that working?

A. It is not at present.

Q. How long has that been idle?

A. For two years.

Q. It was idle when the American Sugar Refining Company purchased it, was it?

A. It was.

Q. What about the Bay State Sugar Refining Company of Boston? (275)

A. That property is idle.

Q. Is it dismantled?

A. Its machinery has been removed to the Standard Refinery, and the capacity of the Standard increased by the amount of the Bay State.

Q. When was the machinery taken out from the Bay State Refinery?

A. It has been gradually removed during the last two or three years.

Q. What about the Continental Sugar Refining Company of Boston?

A. That is embraced in the Standard Refinery.

Q. What about the Forest City Sugar Refining Company, of Portland, Maine?

A. That property is idle.

Q. What is its capacity?

A. About six hundred barrels.

Q. How long has that been idle?

A. Ever since it was acquired by the company.

Q. Was it idle when you acquired it?

A. It was.

Q What about the St. Louis Sugar Refining Company?

A. That property is not in operation.

Q. What is its capacity?

A. About between four thousand and five thousand barrels. Say four thousand barrels.

Q. How long has that been closed?

A. That has not been in operation since it was purchased.

O. Was the St. Louis Refinery working when you purchased it?

A. It was not.

Q. How about the Louisiana and Planters' Sugar Refining Companies, of New Orleans?

A. They are both in operation.

(277) Q. What is their combined capacity?

A. About between five thousand and six thousand barrels.

Q. What about the American Sugar Refining Company, of San Francisco, Cal.?

A. That is under lease to the Western Sugar Refining Company?

Q. What is its capacity?

A. About three thousand barrels.

Q. Is that working?

A. It is not at present.

Q. From whom did the American Sugar Refining Company purchase the twenty refineries which I have just enumerated?

(The witness is instructed not to answer.)

Q. What is the capacity of the Franklin Sugar Refinery, of Philadelphia?

A. Between five and six thousand barrels.

Q. Is that working?

A. It is.

Q. What is the capacity of the E. C. Knight Sugar Refinery?

A. The E. C. Knight Refinery is being worked as a part of the plant of the Franklin Company. It has no independent capacity.

Q. What was the capacity at the time you purchased it?

A. About twelve hundred barrels; from twelve hundred to thirteen hundred.

Q. That was working when yon purchased it?

A. It was.

Q. Is it now working?

A. It is now working as a part of the plant of the Franklin Refinery.

Q. It is used now as a boiling house for the Franklin Company, is it not?

(278) A. Not altogether. Its capacity is utilized in connection | with the Franklin Refinery as a part of one plant, where it can be more advantageously and profitably worked.

Q. Has the capacity of the Franklin Refinery been increased?

A. It has.

Q. What was the capacity of the Franklin Refinery when you bought it?

A. I think about five thousand barrels.

Q. If it was put in the report made by Willets & Gray at six thousand barrels at that time would be about correct?

A. The capacity of the refinery varies according to the sugar it works. It could work five thousand or six thousand barrels, I suppose, under varying conditions.

Q. And that is what it is working at the present time?

A. It is working that at the present time.

Q. What was the capacity of the Spreckels Sugar Refinery when you purchased it?

A. I think about six thousand barrels.

Q. Have you not got that a little high?

A. I think it netted that when we bought it.

Q. You are not judging the capacity by the price you paid?

A. I am judging by my knowledge of the working of the refinery?

Q. What is its capacity at the present time?

A. I think it exceeds that amount.

Q. It is then the largest refinery yon have in Philadelphia?

A. I think it is.

Q. Is it working at the present time?

A. It is.

Q. Was the Delaware Sugar House working when you purchased it?

A. It was not.

Q. You purchased it at a time when nearly all refineries were shut down, were they not?

A. Yes, sir

Q. But, as a matter of fact, that refinery was ready for work, and was working subequently? (279)

A. It did work subsequent to the purchase.

Q. Both before you purchased it and after you purchased it.

A. Yes, sir.

Q. It was what you would call a working refinery when you bought it?

A. Yes, sir.

Q. With a capacity of about five hundred barrels?

A. I should suppose about five hundred barrels.

Q. How long did you work it after you bought it?

A. Only a short time. A few weeks.

Q. Is it now working?

A. It is not. It is now incorporated in the plant of the Spreckels Refinery, which it adjoins.

Q. What is the capacity of the California Refinery, of San Francisco, California?

A. About three thousand barrels per day.

Q. Was it working at the time it made its lease to the Western Refining Company?

A. It was.

Q. Is it now working?

A. It is.

Q. To its full capacity?

A. Not at present.

Q. How long has it been since it has been working to its full capacity?

A. At this season of the year they have not the supplies of raw sugar on the Pacific Coast. They are dependent on the Sandwich Islands for their sugar, and they are usually closed for about two months in the winter. They have just resumed work.

Q. It was working through this fall?

A. Oh, yes; it was working all through the year 1892, with the exception of about two months.

(280) Q. What is the capacity of the Baltimore Sugar Refinery, of Baltimore, Md.?

A. About fifteen hundred barrels.

Q. Was that working at the time you purchased it?

A. No, sir.

Q. Is it now working?

A. It is not. It has been recently remodeled. It is in process of being remodeled and improved. It will probably resume work within a very short time.

Q. When you say it was not working at the time you bought it you mean it was not working because it was in the winter time?

A. No; it was not working because it had proved a failure and it was necessary to entirely remodel it in order to make it a working refinery.

Q. Was that not working during the year 1891?

A. If so, it was working but a very short time; pehaps a couple of months.

Q. It was only completed and ready for work in February, 1891?

A. I think it worked about two months; two or three months; possibly three months. During that time it demonstrated its incapacity for work.

Q. About what was the total production of refined sugar in the year 1892?

A. I think about one million four hundred thousand tons.

Q. How much of that was produced by the refineries operated or controlled by the American Sugar Refining Company?

A. I have not the exact data at hand for those figures.

Q, About how much?

A. I should say ninety per cent. of it.

Q. Can you furnish me the exact figures and produce them at our next meeting?

A. I do not suppose I can furnish the exact figures. I can only furnish an approximate of it.

(281) Q. You can get it very closely?

A. I have no means of knowing what the product outside of the American Sugar Refining Company is. It can only be estimated.

Q. You can show the product of the American Sugar Refiners?

A. I can show approximately.

Q. You have facilities at your command, I should imagine, for obtaining that information which I would not possess?

A. Possibly.

Q. Has the American Sugar Refining Company, since the purchase of the stock of the Philadelphia refineries, changed the board of directors of those corporations?

A. No, sir; some slight changes have been made, but practically there has been no change.

Q. The entire stock, however, of all those companies in now owned by the American Sugar Refining Company?

A. It is.

Q. And the persons who are acting as directors and officers of the Philadelphia corporations are not stockholders?

A. They are not stockholders in their own right?

Q. What is your method of managing and directing the business of the Philadelphia refineries?

A. They are directed by the officers of the Philadelphia refineries themselves.

Q. Under whose supervision?

A. They have the absolute and direct managament of the refineries. If they want any advice they ask for it from the officers of the American Sugar Refining Company.

Q. Do they direct and manage that business as officers of those corporations, or do they do that as employees of the American Sugar Refining Company?

A. They do it as officers of those corporations.

Q. Do you mean to be understood that there are four corporations in the City of Philadelphia, and State of Pennsylvania, which are absolutely directed by officers who hold no stock in the concerns which they are managing.

A. I mean to say that all the business transacted by those refineries (282) is transacted under the four independent refinery organizations by the officers of those organizations.

Q. And that the officers are not stockholders?

A. And that the officers are only stockholders by reason of stock transferred to them.

Q. Are the officers of those companies paid by the American Sugar Refining Company?

A. They are not.

Q. You have transferred some stock to them?

A. No, sir; the stock remains in their names, as it always has remained in their names.

Q. Then there is some stock in the names of these officers, but they are really not the owners of it?

A. They are all stockholders of record.

Q. Do they own the stock?

A. They do not. It is all owned by the American Sugar Refining Company

Q. Do they receive any dividend or returns from any stock which is in their name?

A. They do not.

Q. Could they vote it?

A. They vote it.

Q. By your consent?

A. By reason of the fact that they are stockholders of record.

Q. Have you any record proof of the fact that those gentlemen are not the owners of the stock that is in their name?

Mr. Johnson: What do you mean by "record proof"?

By Mr. Ingham:

Q. Have you any written memorandum, or statement, or agreement, which shows that those gentlemen are not the owners of the stock which stands in their name? State how that arrangement was effected.

A. There is no written agreement or arrangement on the subject.

(283 Q. How was the arrangement effected by which all the stock of these corporations was transferred to the American Sugar Refining Company as far as ownership is concerned, and a portion of it was left in the name of persons who are now occupying official positions in the boards of the several corporations?

A. The stock itself is in the possession of the American Sugar Refining Company.

By Mr. McMurtrie:

Q. By that you mean certificates?

A. The certificates of stock are in the possession of the American Sugar Refining Company.

By Mr. Ingham:

Q. All properly transferred to them?

A. They are transferred in blank. They could be transferred, but they stand in the names of the stockholders of record of these managers.

Q. Then, in other words, the transfer of the stock has actually taken place, but it has not been recorded on the stock books of the company?

A. The stock certificates are in the possession of the American Sugar Refining Company with a power of attorney to transfer.

Q. Who fixes the compensation they receive in the management of these companies?

A. It is fixed by the several corporations.

Q. By the officers of the corporations?

A. By the directors of the corporations.

Q. Then they fix their own salaries?

A. Certainly.

Q. Do I understand you to say that, for example, in the Franklin Company the four gentlemen who are now on the board of direction, all of them being officers of the Franklin Sugar Refining Company, none of them owning any stock in that company, have the scle power and (284) exercise that power | in fixing the amount of compensation they should receive for their services?

A. The directors are the only persons who can fix the compensation of the officers under the by-laws.

Q. Do I understand you to say they did fix it?

A. They did.

Q. And there was nobody to demur?

A. There was nobody to demur to it.

Q. There was nobody to demur to it?

A. The directors had the authority and they fixed it.

Q. Do you mean to say it was fixed without any consultation with anybody representing the American Sugar Refining Company?

A. I should not say it was fixed without consultation.

Q. You would not say it was?

A. I do not know that it was.

Q. Do you know that it was not fixed without consultation with some one representing the American Sugar Refining Company, who was the owner of all the stock?

A. I do not know positively.

Q. Who are the officers and directors of the Spreckels Sugar Refining Company?

A. Joseph A. Ball, Charles Watson and myself are the three directors. There are only three in that company.

Q. Was Joseph A. Ball one of the directors before the American Sugar Refining Company bought the stock?

A. He was.

Q. And Mr. Watson?

A. Yes.

Q. Does either Mr. Ball or Mr. Watson own any stock of the Spreckels Company?

A. They are stockholders of record.

Q. The same as with the Franklin Company?

A. Precisely.

Q. Are they paid for their services in the Spreckels Company?

A. They are.

Q. Did the board of directors of the Spreckels Company fix the (285)
amount of that compensation?

A. They did.

Q. Was that fixed without any consultation with any one representing the American Sugar Refining Company?

A. My impression is that was fixed prior to the purchase by the American Sugar Refining Company, and there has been no change. In the case of Mr. Ball I know that has been the case. There may have been some change with Mr. Watson.

Q. That is to say, before you purchased the stock you agreed as to it?

A. There was no agreement at all. We found Mr. Ball there as vice-president of the company at a salary, and he has been continued in that office without any change of his salary.

Q. How in reference to Mr. Watson?

A. Mr. Watson is the engineer of the company, and his salary was also fixed. There may have been some change in that. My impression is there has been.

Q. Have you any personal knowledge of it?

A. I think there has been a change there, but I cannot tell to what extent it was changed.

Q. If that change was made, who would authorize it?

A. I, as the president of that company, might very properly have something to say about it.

Q. Did you authorize it?

A. I did.

Q. What was the change?

A. I don't remember now just what the change was. I know his salary was increased.

Q. You remember there was a change?

A. There was a change in the case of Mr. Watson in the Spreckels Company.

Q. In the Knight Refinery and the Delaware Sugar House there are no salaries paid?

(286) A. There are no salaries.

Q. They are not working refineries?

A. They are working in connection with the other two and the salaries of the other two cover them.

Q. That is to say the officers of the Franklin Refinery perform the work which would naturally fall on the officers of the Knight Company, and the officers of the Spreckels Company perform the work of the Delaware Sugar House.

Mr. Johnson:—There is a parole lease from the Knight Company to the Franklin Company, and the Franklin organization runs them.

By Mr. Ingham:

Q. How does the American Sugar Refining Company regulate the price of its sugar?

A. According to the law of supply and demand. According to the price of raw sugars.

Q. I mean practically, how in your company is that price fixed? Who fixes it in the American Sugar Refining Company?

A. It is fixed by officers of the company.

Q. How do you promulgate that price to the public?

A. We put up a card in the office of the company showing what the prices are from day to day.

Q. You issue a card every day of the price of sugar for that day?

A. We put up in our office a memorandum showing what our prices are, and through the salesmen the same information is obtained.

Q. The price issued by the American Sugar Refining Company in their office in New York governs the prices for all the refineries in which you are interested or over which you have control, does it not?

A. The New York price? Oh, no, sir. Prices vary in dfferent places according to the conditions of the market.

(287) Q. Is the price fixed by the American Sugar Refining | Company, at New York, for all the refineries which they control or operate?

A. No, sir.

Q. For example, in Spreckels Refinery, who fixes the price there?

A. Mr. Ball, the vice-president.

Q. Does Mr. Ball fix that price without reference to the price established by the American Sugar Refining Company, at New York ?

A. I presume not. I presume he finds out what our prices are, and, so far as the condition of his business will allow, tries to keep pace with them.

Q. Would the American Sugar Refining Company allow any change in prices of sugar from the rate established by them for that particular refinery ?

A. Undoubtedly. The prices in New York and Philadelphia are not always the same. It depends on the condition of the various refineries.

Q. I think you understand my question. I want to know if the American Sugar Refining Company does not control the sale of sugar at all their refineries at such a price as they deem to be a proper price, taking into consideration the state of the market in the different cities where they operate Refineries?

A. The American Sugar Refining Company leaves to its managers in different places the discretion as to the price of sugar, which is governed by the condition in their refineries. For instance, in New Orleans, while they may know the price in New York is four and three-quarters cents, if they have a stock of sugar they are at liberty to market that sugar to the best advantage so that they can keep their refinery free. The manager there has that discretion. The same is true in Philadelphia. If the Spreckels Refinery has an excess of sugar they reduce the price in order to get it below the price of the American Company. It frequently happens that sugar is selling at less in Philadelphia than it is in New York, and | the same thing is true in New Orleans. At other times it is (288) higher in New Orleans or Philadelphia, according to the conditions of the market. But our intention is to see that competent people in New Orleans are in charge of our business there who have discretion enough to manage those matters. We do not attempt to lay down any cast-iron rule in reference to it. It would not be business-like.

Q. How much discretion do the managers have as to the price?

A. The discretion is entirely according to their conditions ?

By Mr. McMurtrie:

Q. What limits are there on their discretion ?

A. There are no fixed limits. It altogether depends on their situation. We trust their discretion, because we think they are competent. If we find they are not we will get somebody who is.

By Mr. Ingham :

Q. That is, if you should find that they were not exercising that discretion to the best interests of the owners of the stock of the refineries, you would change them, and put in someone who would exercise that kind of discretion ?

A. As stockholders of these companies we should exercise our discretion to elect directors, and through them the officers, who would conduct the business in the interest of the stockholders.

Q. Has the American Sugar Refining Company any practical competition in the sale of refined sugars in the United States?

A. It has practically; yes.

Q. Who are your competitors?

A. The independent refineries named and the New Orleans crop of Louisiana sugars.

Q. When you say "the New Orleans crop of Louisiana sugars," what do we understand by that?

(289) A. The New Orleans market, I should have said, where Louisiana sugars are sold. There are one hundred thousand tons of sugars that are being marketed this year for grocery purposes that are sold direct for consumption, which come directly in competition with the product of the refineries.

By Mr. McMurtrie:

Q. Direct from the plantations, you mean?

A. Yes, sir; white sugars that are made on the plantations.

By Mr. Ingham:

Q. Are those refined sugars?

A. Those are semi-refined sugars. They go into direct consumption in place of refined sugars.

Q. The competition which you have from the independent refineries is trifling and not worthy of consideration, is it?

A. It is not at all trifling and is very worthy of consideration.

Q. Of the one million four hundred thousand tons of sugar estimated to be produced in the United States last year, how much was produced by the Revere Refinery, of Boston, and the New Orleans Refinery? You spoke of ten per cent.

A. The ten per cent. did not include the Louisiana crop. The Louisiana crop is in addition. Ten per cent. of the refined.

Q. Was the Louisiana crop about one hundred thousand tons?

A. The Louisiana crop is estimated about a total of one hundred and seventy-five thousand tons. I estimate one hundred thousand tons this year is going direct into consumption.

Q. Have you any domestic competition that is formidable in the sale of granulated sugar in the markets of the United States.

A. Only to the extent I have named of the percentage of the product refined by other refineries.

(290) In response to Mr. Ingham's call at the last meeting, Mr. Wagner produces the following telegrams:—

FEBRUARY 27, '92.

William H. Merrick, Lamanda Park, Sierra Madre, Cal.:

Will you authorize sale Delaware stock with mine not less than double par value? If yes send power. Answer.

J. VAUGHN MERRICK.

1 '92., PASADENA, CAL.

To J. Vaughn Merrick.

Yes. Will send Power. Wire details of deal night message.

W. H. MERRICK.

The District-Attorney offers in evidence the above telegrams.

Adjourned until Friday, January 27th, 1893, at 8 o'clock, P. M.

Upon notice to counsel the meeting of Friday, January 27th, 1893, was postponed until Wednesday, February 1st, 1893, at 3 P. M.

Wednesday, February 1st, 1893, 3 P. M.

Present—United States District Attorneys Ingham and Ralston and Mr. Phillips;

Mr. Johnson, Mr. Parsons, Mr. Wagner, Mr. McMurtrie;

Mr. Beck, Examiner.

Cross-examination of JOHN E. SEARLES, JR., resumed:—

By The District-Attorney:

Q. At our last examination I asked you for the production of the resolution of the American Sugar Refining Company, authorizing you to conduct negotiations on their behalf | with Philadelphia refineries, and (291) other refineries which you desire to purchase. Have you that resolution with you?

A. I found on looking the matter up that there was no such resolution.

Q. What was your authority?

A. There was no authority given me in the matter to conduct the negotiations. I conducted those negotiations on my own responsibility.

Q. State what were the circumstances attending your conducting these negotiations. That is to say, what authority had you from the American Sugar Refining Company, or the persons who were the directors of that company or interested in it, by which you were authorized to commence negotiations?

A. I had no authority from the directors to conduct these negotiations. All my negotiations were made in my own personal name.

Q. Do you mean us to understand that you were conducting these negotiations on your own account?

A. No, sir. I made these negotiations with these gentlemen personally, with the expectation that the company would be glad to assume them.

Q. What justified that expectation?

A. A general knowledge of the views of members of the board on the subject.

Q. Had the matter ever been discussed?

A. Not formally.

Q. Had it been discussed informally?

A. No; not in the board. I have been conducting negotiations for five or six years, and during that time became pretty well advised as to the general sentiment of the people connected with the business.

Q. What benefit did you expect to obtain for the American Sugar Refining Company in making these purchases?

A. The benefit which might accrue from the ownership of the stock of these companies in their profits.

(292) Q. Did you expect to obtain any benefit for yourself personally other than as you might be interested in the American Sugar Refining Company?

A. No, sir.

Q. Did you, as a matter of fact, obtain any benefit personally yourself?

A. No, sir.

Q. Did you make a report to the company of the result of the negotiations?

A. I did.

Q. Was that purchase ratified by the American Sugar Refining Company?

A. It was.

Q. How was it ratified?

A. By their agreement to purchase the property at the prices which I had negotiated.

Q. How was that agreement expressed?

A. In a resolution of the board of directors.

Q. What is the date of the resolution?

A. The tenth of March.

Q. Have you that resolution here?

A. I have.

Q. Will you produce it?

(The witness produces the resolution referred to.)

The Witness:—The rates are not inserted in this copy; otherwise it is correct as adopted by the board, and I should prefer, unless it is deemed necessary, to omit the figures as a matter of record.

The District Attorney offers in evidence the resolution referred to, the same being marked "Ex. L, Jas. M. Beck, Exl. 2-1-93," and is as follows:

"EXTRACT FROM MINUTES OF BOARD OF DIRECTORS, MARCH 10, 1892.

"*Resolved*, That if the $25,000,000 increase of capital is assented to (293) as required by law, the Company will purchase | the real estate and plant, either by conveyance of the property or transfer of the stock of the following refineries, either, any or all, or any part of either, any or all, at prices payable in stock, half common and half preferred, not to exceed the following rates:

"*For the Franklin Sugar Refining Company,*
"E. C. KNIGHT COMPANY,
"DELAWARE SUGAR REFINERY,
"SPRECKELS SUGAR REFINING COMPANY."

By the District Attorney.

Q. Were any of the details which you had arranged in making the purchase with the owners of the stock of the Philadelphia Refineries altered or changed by the American Sugar Refining Company?

A. They were not.

Q. They accepted the terms as you had made them with the Philadelphia people?

A. They did.

Q. Have you with you the resolution which authorized the increase of stock?

A. I have.

The witness produces the resolution referred to, the same being offered in evidence by the District Attorney, marked "Exhibit 2, Jas. M. Beck, Ex., 2-1-93," and is as follows:

"Extract from the Records of the Stockholders Meeting, January 13, 1892.

"*Resolved*, That with the assent in writing of stockholders representing two-thirds in full of the existing capital stock, the capital of the company be increased by the amount of $25,000,000, one-half in common and one-half in preferred, the additional stock to be paid for in cash at par, or to be used in payment for land and other property to be acquired by the company for the purpose of its incorporation and for improvements upon or to its property, to the amount of the value therefor. The stock is to be issued from time to | time in such sums, and in such manner and for (294) such purpose as the Board of Directors may determine; the Board of Directors being authorized, and they hereby are authorized, to take all the necessary proceedings for the issue of stock and the filing of the necessary certificates."

Q. Was the assent of the owners of two-thirds of the capital stock of the American Sugar Refining Company obtained in writing?

A. It was.

Q. Have you that with you?

A. I have not. That was not in any one document. The circular was sent to each stockholder and he returned written on it his assent, and computation was made of the sum total of all those assents. There were some between four thousand and five thousand stockholders, and each one of them sent a written assent and the sum total of these was taken, which gave the assent, giving the requisite two-thirds.

Q. The condition of the trade in refined sugars was very unsatisfactory during the years 1891 and 1892, was it not?

A. There were times during the year when it was unsatisfactory.

Q. What was the cause of that unsatisfactory condition of trade?

A. Over-production.

Q. At that time there was a very brisk competition between the company that you represented, the American Sugar Refining Company, and the refineries situated in Philadelphia, was there not?

A. I can scarcely say that there was a brisk competition. The American Sugar Refining Company's figures were generally the basis for the market, I think

Q. Was there a ruinous competition?

A. Oh, no.

Q. Was there not that kind of competition which unsettled the price, and in consequence of over-production made it difficult to conduct the business at a profit?

A. The business was conducted at a profit.

(295) Q. At a satisfactory profit?

A. I could not answer for other people as to that.

Q. Was it not informally discussed among the officers of the American Sugar Refining Company that in order to prevent competition it would be necessary to obtain control of the Philadelphia refineries?

A. I have no recollection of any such discussion as that.

Q. During the time that you had interviews witt. Spreckels did you not present that feature of the case to him?

A. I do not remember any such presentation.

Q. That it would be to the advantage of all parties concerned to have the control of the sugar market vested in one central corporation?

A. I have no recollection of making any such argument.

Q. What arguments did you make to Mr. Spreckels?

A. The argument to Mr. Spreckels was mainly the advantage to him of selling his property in Philadelphia and retiring to the Pacific Coast.

Q. You did not change Mr. Spreckels condition as being interested in the manufacture and sale of sugar by exchanging stock of your corporation for the stock of his corporation, did you?

A. I do not think I understand your question.

Q. That is to say, Mr. Spreckels was just as much interested in the price of sugar after he had taken your stock as he was at the time he held the stock of his own corporation here in Philadelphia, was he not?

A. I should say rather more.

Q. What do you mean by that?

A. He was interested in the entire refining business of the various corporations when he took the new stock.

Q. The capital stock of the American Sugar Refining Company was $50,000,000 originally?

A. Originally; yes, sir.

(296) Q. Was that stock all issued?

A. It was.

Q To whom was it issued?

Mr. Johnson: Do you mean the stockholders?

The District Attorney: Yes.

(Mr. Johnson instructs the witness not to answer.)

By the District Attorney:

Q. Did I understand you to say that while you were acting for the American Sugar Refining Company in the purchase of these Philadeldelphia refineries or their stock, you consulted with the stockholders before you commenced the negotiations with a view of ascertaining what their views would be.

A. I did not so state.

Q. Did you do that?

A. I did not.

Q. Did you not consult with any of the stockholders of the American Sugar Refining Company?

A. I may have done so. I may have talked with them on the subject without any formal consultation. As I stated before, I conducted the negotiations on my own behalf and responsibility, and submitted the matter to them and they authorized the purchase.

Q. That is, the American Sugar Refining Company?

A. Yes, sir.

Q. But before the company ratified it did you obtain an expression of the view of any of the individual stockholders of the American Sugar Refining Company?

Mr. Johnson: Do you mean apart from those assents which he got?

The District Attorney: Yes; I mean apart from those assents.

The Witness: I presume the matter had been a subject of conversation between myself and different persons interested in the company.

By the District Attorney: (297)

Q. Will you state who those different persons were?

A. I could not state; no.

Q. Could you state any of them?

A. I have no definite recollection on the subject of any such interviews.

Q. Did you ever have any consultation with Mr. Parsons with reference to the purchase of the Franklin Sugar Refinery?

Mr. Johnson: Why do you ask that question?

The District Attorney: It is all in the same line as the questions I have asked with reference to the stockholders.

(Mr. Johnson instructs the witness not to answer.)

By the District Attorney:

Q. Did you have any conversation with Mr. Parsons?

(Mr. Johnson instructs the witness not to answer.)

A. I decline to answer.

Q. Did you attempt any negotiations on your own behalf for the purchase of the Franklin Refinery?

A. I did not.

Q. Did you know that Mr. Parsons was conducting negotiations for the purchase of the Franklin Refinery?

A. I did.

Q. Did you know that at the same time as when you were conducting negotiations for the purchase of the other Philadelphia refineries?

A. I did.

Q. From whom did you obtain that information?

A. I presume from Mr. Parsons.

Q. It was a matter, then, of consultation between yourself and Mr. Parsons, and Mr. Parsons was determined upon as being the proper person to purchase the Franklin Company's stock?

A. I could not say that was the correct way of stating it.

Q. Please state it correctly.

A. Mr. Parsons conducted the negotiations. I knew that he was negotiating with the Franklin people.

(298) Q. Where is the home office of the American Sugar Refining Company?

A. Jersey City.

Q. Whereabouts in Jersey City?

A. The corner of Washington and Essex streets.

Q. Are the stock books of the American Sugar Refining Company kept at their home office in Jersey City?

A. Part of them are there.

Q. Where are the others?

A. They are at times in New York for convenience.

Q. Are those books in your custody and control as secretary and treasurer of the American Sugar Refining Company?

(The witness is instructed not to answer the question, as that is a purely legal question. The question whether or not a secretary has control of books and papers is one that the witness cannot answer, but must be determined by the by-laws of the corporation.)

Q. Are those books in your custody?

(Mr. Johnson instructs the witness not to answer, because the question is one of law.)

Q. Was the $50,000,000 capital stock of the American Sugar Refining Company at the time it was issued, issued to the owners of the separate refineries which you have enumerated as being transferred to the American Sugar Refining Company shortly after its organization?

(Mr. Johnson instructs the witness not to answer.)

Mr. Johnson: My objection is that the Government has nothing at all to do with the constituent elements of the dealings of the corporation, and the question of who owns its shares is not involved in any litigation now raised.

By the District Attorney:

Q. You said in your prior examination that the American Sugar Refining Company was the owner of the properties enumerated in the schedule of refineries which you said were transferred to that corporation shortly after it was organized. | How was the property of those refineries transferred to the American Sugar Refining Company? (299)

(Mr. Johnson instructs the witness not to answer, for the same reason.)

Q. Were the Havemeyer & Elder Company, the Brooklyn Sugar Refining Company, the Havemeyer Sugar Refining Company, the Dick & Meyer Company, the Oxnard Brothers' Company, the Moller & Sierck Company, the DeCastoro & Donner Company, the Matthieson & Weichers Company, the Standard Refining Company, the North River Company, and the Standard, Bay State, Boston and Continental Sugar Refining Companies, all corporations?

A. They were; yes, sir.

Q. Is the capital stock of those corporations now held by the American Sugar R fining Company?

A. Those corporations are all dissolved. They are all gone out of existence.

Q. When were those corporations dissolved?

A. In 1891.

Q Immediately prior to the forming of the American Sugar Refining Company?

A. No, sir; subsequently.

Q. After the American Sugar Refining Company was organized?

A. After the American Sugar Refining Company was organized.

Q. Did the American Sugar Refining Company ever own the stock of those companies?

A. The American Sugar Refining Company bought the property and the companies having no property were then disbanded by order of the court.

Q. You did not answer my question as to whether or not the stock of those companies, before they were dissolved, was ever held by the American Sugar Refining Company.

A. I think the stock was held. The stock was held, but represented no property.

Q. Was the consideration that the American Sugar Refining Company paid for those properties paid in stock of the American Sugar Refining Company? (300)

(Mr. Johnson instructs the witness not to answer.)

A. I decline to answer, by advice of counsel.

Q. Were the sugar certificates issued by the Sugar Refineries Company redeemable in stock of the American Sugar Refining Company?

(Mr. Johnson instructs the witness not to answer.)

A. I decline to answer.

Q. Have you the annual reports of the American Sugar Refining Company for 1891 and 1892?

A. I have. (Producing same.)

The District-Attorney offers in evidence the said reports, the same being marked respectively "Exhibit 3" and "Ex. 4," J. M. B, 2-1-93," and being as follows:—

1891.

AMERICAN SUGAR REFINING CO.'S STATEMENT.

The annual meeting was held January 13th. The treasurer's report states that the cash assets and investments taken over by the company was $8,750,000. The remainder of the stock—$41,250,000—represented the real estate and plant, but after providing for all the outstanding certificates of the Sugar Refining Co., (Sugar Trust,) there came back to the treasurer, available for the purchase of additional property, thirty-five hundred and eighty-three shares of common stock and thirty-six hundred and ninety-five shares of preferred stock, with the accumulated dividends $54,515. There have been issued $10,000,000 six per cent, bonds, none of which have been disposed of up to this time. By reason of the magnitude of the business it has been found impossible to secure absolutely accurate reports up to December 31st. The books of the company, however, show net earnings for year not less than $5,073,002.17, from which amount two semi-annual dividends have been paid, each of (301) four per cent. | on the common and three and one-half per cent. on the preferred, amounting in all to $3,750,000, leaving a surplus of net earnings of $1,323,002.17 reserved for contingencies. Messrs. T. A. Havemeyer and J. B. Thomas were re-elected directors, and the board was classified so that two directors will serve for three years, two for two years, and two for one year. All litigation of every kind is settled. The fiscal year is changed to November 30th. A resolution was passed unanimously, providing that upon the assent in writing of two-thirds of the stockholders the capital stock of the company may be increased $25,000,000, one-half in preferred and one-half in common stock, to be issued at par for cash. The resolution authorizes the board to take the necessary steps to carry out the issue of the stock from time to time, to acquire other refineries, or for the increase of plants as the directors deem advisable.

The balance sheet is as follows:—

Assets.

Cash	$ 2,558,040
Call loans	1,196,955
Sugar, bone black and supplies	7,110,549
Outstanding accounts	2,971,642
Stock and investments	3,558,288
Loan accounts	1,357,079
Plant account	41,250,000
Other items	2,842,847
Total assets	$62,845,391

Liabilities.

Capital stock	$50,000,000
Unpaid dividends	1,879,912
Loans, balances due foreign bankers and bills payable	8,570,000
Mortgages	180,000
Sundy items	892,476
Total liabilities	$61,522,388
Surplus	1,323,003
	$62,845,391

AMERICAN SUGAR REFINING COMPANY'S ANNUAL SETTLEMENT. (302)

The following is the statement of Mr. John E. Searles, Jr., treasurer of the company:

At the last annual meeting a resolution was adopted authorizing an increase of the capital stock of the company, "by the amount of $25,000,000, half in common and half in preferred, the additional stock to be paid for in cash at par, or to be used in payment for land and other property to be acquired by the company for the purpose of its incorporation, and for improvements upon or to its property to the amount of the value therefor, the stock to be used from time to time, and in such sums and in such manner and for such purposes as the board of directors shall determine."

Under the authority so given, additional stock to the amount of $23,546,000, half each, common and preferred, has been issued for the purchase of the following Philadelphia refineries: *i.e.*, The Franklin Sugar Refining Company, the E. C. Knight Company, the Spreckels Sugar Refining Company and the Delaware Sugar House. Also, a large proportion of the capital stock of the Baltimore Sugar Refining Company, which amounts appear in the accompanying statement under the head of "Investments."

The $10,000,000 of six per cent. bonds, issued in January, 1891, remain in the treasury of the company unsold, the bonds lodged as security under the reorganization agreement, referred to in the last annual report, having been released by the last dissolution of ths old corporations and returned to the treasury of the company.

At the annual meeting of the stockholders a year ago a resolution was adopted providing for a change in the fiscal year of the company to November 30th instead of December 31st, as heretofore. The statement of the treasurer for the present year will therefore cover but eleven months, from January 1st to December 1st, 1892.

The net earnings of the company for the eleven months, according to (303) the books, have been $8,615,837.52, from which amount semi-annual dividends of four per cent. on the common stock and three and one-half per cent. on the preferred were paid in July, a quarterly dividend of two and one-half per cent. on the common stock on October 1st, leaving a surplus of net earnings to December 1st of $4,938,537.52, from which, however, is to be deducted the dividend paid on January 3d of $2,206,380, which would leave a surplus for earnings the eleven months $2,732,157.52. There was brought over from the year 1891, a surplus of $1,637,822.70, which, with the addition of 1892, makes the total surplus as of December 1st, after deducting the dividends of January 3d, $4,369,980.22. No dividends have been declared by the companies whose stock this company holds. Following is a statement of the assets and liabilities of the company on December 1st:

Assets.

Refineries' plant account	$41,250,000
Cash	1,271,992
Demand Loans	7,186,500
Sugar, raw and refined	7,297,770
Sales account	4,609,528
Bone black and sundry supplies	1,584,040
Fire insurance policies and taxes account	55,724
Additional refinery property	1,547,240
Refinery improvement account	2,533,969
Investment account	23,546,000
Treasury stock	636,870
Stock in other corporations	2,438,160
Brooklyn Cooperage Company loan account	651,605
Brooklyn Transportation Company loan account	420,674
Atlantic Mutual Insurance scrip	6,773
Sundry open accounts	122,612
Total	$95,159,462

(304) *Liabilities.*

Mortgages,	$180,000
Loans,	7,458,946
Unpaid bills,	1,813,390
Foreign Bankers' Letter of Credit Account,	3,896,449
Due on open account,	511,336
Unpaid dividends,	1,812
Sugar Refineries Company,	811,363
Sales of real estate and materials,	363,803
Capital,	73,546,000
Surplus—1891, $1,637,822; 1892, $4,938,536,	6,576,360
Total,	$95,159,462

Q. What do you understand by the term "refined sugar"? What is refined sugar?

A. Sugar which has been refined.

Q. Can you not give a little clearer explanation than that? I would like to understand the difference between a refined sugar, a semi-refined sugar and a raw sugar.

A. What we know as refined sugar in the trade is sugar that once having been made as raw sugar has been remelted, and, by a process of refining, has been purified and brought to a higher standard. What is characterized as semi-refined sugar is a sugar which, in the original process of manufacture, having first been made as a raw sugar, had been treated still further in connection with the original manufacture and brought to a higher order of manufacture and made fit for consumption.

Q. But not melted?

A. But not remelted.

Q. And raw sugar is what?

A. Raw sugar is the crude sugar which is first made from the original juice of the cane or beet.

Q. Of course granulated sugar is a refined sugar?

A. It is.

Q. Is what we commonly call white sugar or soft white sugar a refined sugar? (305)

A. It is.

Q. Is brown sugar a refined sugar?

A. If it is the product of a refinery. In the refining of sugar there are various grades as a necessary result of the product of raw sugar. There is first a very white sugar, a fine sugar and then the grade runs down. They are all refined sugars, but of varying grades.

Q. Do the refineries operated by the American Sugar Refining Company turn out these various grades of sugar?

A. They do.

Q. And call them all various kinds of refined sugar?

A. They do.

Q. Do you turn out brown sugar?

A. Yes, sir.

Q. In the quantity of sugar consumed in the United States about what percentage is refined and what percentage is unrefined?

A. I think about ninety-five per cent. is refined.

Q. Where does the unrefined sugar that is consumed in the United States come from?

A. From Louisiana and Texas and the product of the beet factories in Nebraska, Utah and California. Florida should be included in the cane sugar countries. Some sorghum from Kansas and scattered factories.

Q. That is actually sold in the groceries through the country?

A. It is.

Q. And consumed by the people?

A. As a rule; yes. Some of the product of the Louisiana growth is sold for refining and other of it goes into direct consumption.

Q. That sold for refining purposes I do not wish to be included.

A. No; the ninety-five per cent. covers that domestic product which is refined. (306)

Q. You say there is about five per cent. then of unrefined sugar consumed in the country?

A. Yes.

Q. In the ninety-five per cent. of refined sugars spoken of by you about how is that divided as between granulated, white and brown?

A. It would be very difficult to give those figures. My judgment is that there is seventy per cent. of it that is white sugar and the balance of it varying grades from a soft white down to a brown sugar.

Q. When you say "white sugar" you mean granulated, do you not?

A. Not necessarily. It may be cubes; it may be cut loaf.

Q. But the higher grades of sugar?

A. The higher grades of sugar.

Q. There would be seventy per cent. of the grade of granulated, or above?

A. I should think so.

Q. And the balance what?

A. The balance varies in color and quality.

Q. Soft white and brown?

A. Yes, sir.

Q. About what is the amount of refined sugars imported into the United States?

A. I have not those figures. I have no data by which to give you any figures as to the importations.

Q. Is there any quantity of sugar imported?

A. There is some considerable sugar imported.

Q. Where does it come from?

A. It comes from Germany, from Scotland, from England, from China.

Q. What quality of sugar is that?

A. There is some granulated sugar.

(307) Q. Where does that come from?

A. That comes from Germany.

Q. How much of that do you think is imported into the United States?

A. I do not know just the amount. The importations have been steady during the year: not in very large quantities, but there is some coming all the time. I have not kept the run of it so as to know how much. Then there is a white sugar that comes from China, on the Pacific Coast, and is sold there in competition with the product of the refineries.

Q. White soft or white hard sugar?

A. No; it is a hard sugar.

Q. What comes from Scotland?

A. Those are what we call Scotch; they are a yellow sugar; a soft sugar.

Q. Is that a refined sugar?

A. That is a refined sugar; yes.

Q. Is that above No. 16 Dutch Standard in color?

A. Some of it is.

Q. And the rest of this is all above No. 16?

A. It is.

Q. About what is the quantity of refined sugar consumed in the United States, yearly.

A. I think last year about between one million six hundred thousand and one million seven hundred thousand tons

Q. Is that sugar consumed in all parts of the United States?

A. In all parts of the Unitid States.

Q. About in proportion to the population?

A. Yes, sir.

Q. When you transferred to Spreckels and the Delaware Sugar House and to Knight the shares of stock of the American Sugar Refining Company, which was the agreeed consideration, was there any understanding with any of those gentlemen, or either of them, in which there was any limitation put on the price at which they would sell that stock?

A. None whatever.

Q. They were at liberty to dispose of it at any price they saw fit? (308)

A. At any price they saw fit.

Q. About what year was it that the Havemeyer & Elder Company, or as individuals, started their refinery in California?

A. It was 1889 or 1890; I am not sure which.

Q. About what time was it that the Spreckels Sugar Refining Company commenced operations in Philadelphia?

A. The early part of the year 1891. About the first of the year.

Q. When did they commence building here?

A. In 1890, I think. Possibly, they commenced in 1889; I am not certain.

Q. Prior to the building of the Havemeyer Refinery, in California, was there any other refinery in operation on the Pacific Coast? If, so, how many and what were they?

A. The Havemeyer Refinery was not built by the Havemeyers. It was an operating refinery which they purchased.

Q. From whom did they purchase it?

A. They purchased it from the American Sugar Refinery Company, which was a company organized, I think, ten years ago.

Q. By whom?

A. By some gentlemen in San Francisco. I think that refinery has been in operation ten years. I think it was fully ten years ago that they started.

Q. What other refinery was there on the Pacific Coast?

A. The California Refinery.

Q. Do you know when that commenced operations?

A. Twenty years ago, I think.

Q. That was the Spreckels Refinery?

A. Yes, sir.

Q. Shortly after the Havemeyer & Elder Company obtained control of the refinery in California and entered into | competition with Mr. (309) Spreckels there, Mr. Spreckels came to the East and built his refinery at Philadelphia, did he not?

A. It was after that time that he built in the East.

Q. Was the Spreckels Refinery in Philadelphia built and carried on as a retaliatory measure against the American Sugar Refining Company on account of their having commenced raiding his domain on the Pacific Coast?

Mr. Johnson:—We object to that question, because it is impossible for the witness to know what the motives of another man were, and, after having made the objection, we instruct him not to answer.

Mr. McMurtrie:—There is nothing in this bill that this has any bearing upon in the remotest degree.

The witness:—I decline to answer.

By the District-Attorney:

Q. It was after Mr. Spreckels commenced erecting his refinery in Philadelphia that the American Sugar Refining Company found it convenient to make an agreement with Mr. Spreckels on the Pacific Coost, was it not?

(Mr. Johnson instructs the witness not to answer a question that would involve him in the consideration of an agreement that he is not shown to know anything about, and which, if he is, is not relevant to any controversy, and which has not been shown to exist.)

Q. Had you any knowledge of the transactions which took place with reference to the organization of the Western Sugar Refining Company and the leasing by that company of the Spreckels Refinery on the Pacific Coast?

A. I had.

Q. From whom did you obtain the knowledge?

A. From the parties interested.

Q. Who were they?

A. Mr. Spreckels or his associates—the owners of the property.

(310) Q. Did you obtain any knowledge from the owners of the American Sugar Refining Company in San Francisco also?

A. Yes, sir.

Q. Who were those people?

A. Havemeyer and Elder.

Q. When did you obtain this knowledge from Mr. Spreckels or his associates?

A. At the time when the negotiations were made.

Q. What time was that?

A. I think in 1890.

Q. Where were those negotiations conducted?

A. In San Francisco.

Q. Entirely?

A. Entirely.

Q. Were you there?

A. I was.

Q. State what was the purpose of those negotiations. What object was expected to be accomplished by them?

A To consolidate the earning capacity of these properties.

Q. Did you conduct the negotiations?

A. I did.

The District Attorney:—Mr. Johnson, will you now withdraw your objection to the other question which I asked?

Mr. Johnson:—No.

The District Attorney:—I have shown that he has knowledge and conducted the negotiations. Do you still insist on your objection?

Mr. Johnson:—Yes.

By the District Attorney:

Q. Did you commence any of those negotiatiations prior to the time that Mr. Spreckels had commenced building his refinery in Philadelphia?

A. No, sir.

Q. Can you say that there was no connection whatever between the fact that Mr. Spreckels was building a refinery | on the Atlantic Coast (311) and the fact that you desired to make a combination of the two refinaries in San Francisco?

A. I do not think there was any connection between the two.

Q. Do you say positively that there was not?

A. I do not think there was.

Q. Had the American Sugar Refining Company or the Havemeyer & Elder Company, after their purchase of the American Sugar Refining Company in California, commenced a very active competition with Mr. Spreckels on the Pacific Coast?

A. The refineries there had always been in competition necessarily and continued so.

Q. Had not that competition increased after Havemeyer & Elder obtained the refinery there?

A. I do not think so.

Q. Did not Mr. Spreckels assert to you and to others that the purpose of Havemeyer & Elder or the American Sugar Refining Company in obtaining that lease was to ruin him by competition that he could not meet?

A. I never heard of any such assertion.

Q. He never made that statement to you?

A. No.

Q. Or to anyone to your knowledge?

A. Not to my knowledge.

Q. Did he not say to you, or to anyone to your knowledge, that he would build the refinery in Philadelphia for the purpose of competing with the American Sugar Refining Company in their own jurisdiction?

A. I could not say as to whether he made those remarks. I think very likely he did; he made a great many.

Q. Then, as a matter of fact, he carried the war over on the Atlantic Coast did he not? He changed the scene of combat from the Pacific Coast to the Atlantic Coast, did he not?

A. If you mean by that he built a refinery in Philadelphia I should say he did.

(312) Q. And continued a very active competition with the American Sugar Refining Company until you were obliged in self protection to buy him out at his own price?

A. No, sir; I should not make such admission as that by a good deal.

Q. Is not that substantially the truth?

A. No, sir; I don't think it is.

Q. Are the refineries under the control of the American Sugar Refining Company in constant operation as a rule.

A. Some of them. Others are not. As I stated, I think, before, the demand for sugar at certain times of the year is very much greater than at others. The production is regulated according to the demand, according to the consumption. In the summer time it is necessary to have the refineries run full. In the winter time the product could not all be sold and therefore they are not all running full

Q. Some of your refineries do run full all the time?

A. Oh, yes.

Q. Others do not?

A. Others do not.

Q. How many refineries have you that run constantly?

A. There are five refineries that run constantly.

Q. What is their average daily production in barrels?

A. I gave you the figures at the last hearing. I cannot recall them again. I should say about twenty thousand barrels.

By Mr. Phillips:

Q. I think, in answer to a question the other day, you said the capacity of the refineries under your control was forty thousand barrels a day. What did you mean by that?

A. I stated that the total capacity of the entire plant of the company at that time, if in full operation, would be about forty thousand barrels a day.

Q. What do you suppose is the actual annual production of all the refineries under your control?

(313) A. I think about one million three hundred and fifty thou- | sand tons; perhaps one million four hundred thousand tons. I understood the last question as to production to relate only to what were running constantly.

Mr. Ralston: The witness has testified that the American Sugar Refining Company owns the properties of these companies mentioned and did own their stock when it first started. Do you refuse to allow him to answer any questions as to the way they obtained that stock?

Mr. Johnson: Yes.

By Mr. Ralston:

Q. As to these other Boston properties, does the American Sugar Refining Company own stock of those corporations?

A. Those corporations are all dissolved.

Q. Are they dissolved in the same way as the others?

A. The same way; yes.

Q. Did those Boston companies belong to the Sugar Refineries Company:

A. I was asked what companies were in the American Sugar Refining Company, and I gave you a full list at the time.

By the District Attorney:

Q. The American Sugar Refining Company at one time held this stock, but after the companies were dissolved then the stock was of no more use, the American Sugar Refining Company having obtained the property itself; but there was a time when the American Sugar Refining Company held the stock of those Boston Companies as well as the others. That is what you said?

A. Yes, sir.

By Mr. Johnson:

Q. Did I understand you to say to the District Attorney that the American Sugar Refining Company first got the shares of stock of those corporations and then acquired the property, or first got the property and afterwards the shares of stock?

A. The American Refining Company bought the | property of all (314) those corporations and then took the shares of stock.

By Mr. Ralston:

Q. How could they own the property when the stock was outstanding?

A. The American Sugar Refining Company bought the entire properties of these corporations.

By Mr. Johnson:

Q. From the corporations themselves?

A. From the corporations themselves, and then the corporations had no property.

By the District-Attorney:

Q. Then how did the stock get into the possession of the American Sugar Refining Company?

A. The stock was held by the American Sugar Refining Company pending the winding up of the corporations by the court.

Q. After you had bought the properties?

A. Yes, sir.

Q. Then the stock was delivered to you in connection with the property and you held the stock until the courts dissolved the corporations; is that the fact?

A. The company purchased the entire properties.

Q. That included the stock?

A. Including all the assets of these companies, and the stock was handed over.

Q. At the same time?

A. Subsequently; after the transfer of the properties.

Q. But practically then you bought the property, all of their franchises and stock, and subsequently you had the courts dissolve the corporations and the stock became of no further value; is that the fact?

A. The purchase of the properties was made from those corporations through their officers, which left the corporations without any property. Their stock certificates were handed over, their property having all been disposed of to the American Sugar Refining Company.

(315) Q. It was part of the terms of your purchase?

A. I do not think the stock of the companies was a part of the purchase. I think the property of the companies formed the purchase.

Q. What consideration did you give for the stock, if any?

(Mr. Johnson instructs the witness not to answer.)

Re-examined.

By Mr. Johnson:

Q. At the present day is the Spreckles Sugar Refinery in Philadelphia running to its full extent, saving where there are mechanical difficulties or something connected with the refinery that prevents its running?

A. It is.

Q. Has there been any attempt to limit its production?

A. Not at all.

Q. With regard to the E. C. Knight Company, what is being done? Is it being dismantled or being improved so as to increase its product?

A. It is being improved to increase its product.

Q. And how with regard to the Franklin Refinery? Has that been run full since the purchase of its stock or not?

A. It has.

Q. In point of fact, is it not the case that the actual amount of output of refined sugar in Philadelphia since the purchase has been, as compared with the corresponding period last year, greater?

A. It has.

Re-cross-examined.

By Mr. Ralston:

Q. You say the capacity of the Knight Refinery has increased. That does not run any more as an independent refinery?

A. It is part of the Franklin plant.

Q. And the same with the Delaware Sugar House and the Spreckels Refinery?

A. Yes, sir.

(316) By the District Attorney:

Q. You have only two refineries operated in Philadelphia at the present time?

A. They are operated under two organizations.

Q. That is to say, the Spreckels Refinery uses the Delaware Sugar House as a sort of feeder and the Franklin Refinery uses the Knight Refinery in assisting in some of the processes of manufacture?

A. They are worked in conjunction.

Q. You have only two active corporations; one the Spreckels Refinery and the other the Franklin Refinery?

A. Those are the only two active corporations. That is to say, they are only the two refineries that are putting out sugar.

Q. And the only ones where the officers of the company have anything to do?

A. The only ones where the officers of the company have anything to do.

Q. Or where they receive any salary?

A. Or where they receive any salary.

Q. Or any compensation?

A. Yes, sir.

By Mr. Johnson:

Q. And the result of the consolidation of the two refineries under one management is what; to increase or diminish the aggrregate output.

A. To increase the aggregate output.

Q. With more economy in the working?

A. Yes, sir.

By Mr. McMurtrie:

Q. You mean the present two produce more than the former four did?

A. Yes, sir.

Adjourned until Wednesday, February 8th, 1893, at 3 o'clock P. M.

Wednesday, February 8th, 1893, 3 P. M. (317)

Present—Mr. Beck, the Examiner; and Messrs. Ingham, Ralston, Phillips, Johnson and Wagner, of counsel.

George R. Bunker, sworn—

By the District Attorney:

Q. Where do you reside?

A. In Philadelphia.

Q. You were a stockholder of the Delaware Sugar House?

A. I was; yes, sir.

Q. What was your official connection with that corporation?

A. I was manager of the company and secretary and treasurer.

Q. Did you negotiate the sale of the capital stock of that company with Mr. Searles?

A. Yes, sir.

Q. Mr. Searles was conducting that negotiation on behalf of the American Sugar Refining Company, was he not?

A. I did not know that.

Q. Do you mean us to understand that you did not know that Mr. Searles was acting for the American Sugar Refining Company?

A. I don't think the name was mentioned of the company.

Q. That is not an answer to my question. I asked you if you mean to say that you did not know that Mr. Searles was acting for the American Sugar Refining Company in making this purchase?

A. No; I did not know it.

Q. Did you know that he was to pay you for your stock in stock of the American Sugar Refining Company?

A. Yes, sir.

Q. You did know that. Did you know that he was the secretary and treasurer of the American Sugar Refining Company?

A. I did.

(318) Q. Did you know that the sale of your stock to Mr. Searles was contingent upon the approval of the American Sugar Refining Company and issuing an increased amount of stock?

A. Yes, sir.

Q. If you knew all that, how do you explain that you did not know that he was acting for the American Sugar Refining Company?

A. The negotiations were made with Mr. Searles in his own name.

Q. Is that the only explanation that you have to offer?

A. That is the only answer I can give to that question. You asked me what I know of my own knowledge.

Q. You knew that he was the secretary and treasurer of the American Sugar Refining Company, that he was to give you in payment for your stock stock of the American Sugar Refining Company, and that the American Sugar Refining Company had to authorize the issuing of the stock and approve his action before that stock could be transferred, and yet you did not know that he was acting for that company?

Mr. Johnson objects, because the witness has not said that he knew the American Sugar Company was to approve Mr. Searles' action in buying the Delaware Sugar Refinery.

MR. WAGNER:—The contract is set out in the written agreement which has been produced and all the conditional part relating to the stock and of the assent of the stock-holders of the American Sugar Refining Company is set out in the quotation of that written agreement which is part of the record, so I must object to the line of examination as to what is contained in that agreement which is the embodiment of the contract as to which the witness is being examined.

Mr. Johnson asks the witness to observe all the parts of the question, so that in giving one answer to several of the parts he may not make that answer sufficiently broad to include any other part that ought not to be included.

(319) A. I did know he was the secretary and treasurer of the | American Sugar Refining Company; I did know he was to give in payment stock of the American Sugar Refining Company.

Q. (Question repeated.)

A. There is one clause there that I did not know; I did not know that the American Sugar Refining Company had to approve of his action; I knew nothing of that.

Q State what Mr. Searles said to you with reference to the necessary action of the American Sugar Refining Company before this sale could be consummated.

A. The agreement answers that question, that the necessary assents had to be obtained for an increase of their capital stock.

Q. Did Mr. Searles state that to you in his conversations with you at the time you were negotiating the purchase?

A. I do not recollect.

Q. As a matter of fact, did not you know that this stock of the Delaware Sugar House was to go to the American Sugar Refining Company?

A. I had no means of knowing it positively; I did not know it; I might have inferred it, but I did not know it.

Q. Do you mean to say that you did not know it simply because it was not expressed in writing in the agreement?

A. I mean that I did not know it because I was never told so; I had no positive evidence that such was the case.

Q. Did you need it to be told you in words in order to know it?

A. I needed positive evidence of it to know it.

Q. Did not you have positive evidence of it?

A. I think not.

Q. What further evidence would you have required to have assured you that the American Sugar Refining Company was to be the owners of your stock than you already had?

A. Well, an agreement with the American Sugar Refining Company would have been sufficient.

Q. You knew his connection with the company? (320)

A. Yes, sir.

Q. You knew that the payment was to be made in the stock of the company?

A. Yes, sir.

Q. You knew that that payment could not be made and the stock issued without the assent of the company?

Mr. Johnson objects to this as being cross-examination of a witness instead of examination, and also because the questions are misleading to the witness, inasmuch as two questions are put together without the witness' attention being sufficiently called to the fact that the two questions are dissimilar in their character.

Q. You knew that that payment could not be made and the stock issued without the assent of the company and the consent of the stockholders obtained to an increase of the capital stock?

A. Well, I did not know that. That is not as I understood the question.

Q. Did you know that the stock which you were to receive in payment for the stock of the Delaware Sugar House was to be new stock of the American Sugar Refining Company issued directly by them for the purpose of making this purchase?

Mr. Johnson objects for the following reason: The witness now being examined is not a party defendant whom the Government may cross-examine. He is an independent witness called by them and must be examined under the ordinary rules of evidence; that Mr. Johnson has no objection whatever, inasmuch as the Government has already put in evidence a written agreement which professes to have been an agreement between the American Sugar Refining Company and the Delaware Sugar House, or its stockholders, to having this witness examined as to whether that agreement is the agreement that was entered into or whether there was some other agreement of which that agreement is the mere close. | (321) but he does object as being entirely irrelevant to any questions as to what the witness knew or did not know, the question being what he contracted to do; and Mr. Johnson says that under the objection he will ask the court at the proper time to strike out the whole testimony of the witness as being taken under objection, contrary to the rules of evidence.

Q. (Question repeated.)

A. I knew nothing more than the agreement states.

Q. What did you know?

Mr. Johnson now objects, because the witness is asked to state orally what is the contents of a written instrument, he having stated that he knew nothing more than what the written instrument already offered in evidence showed.

Mr. Wagner:—My original objection went direct to that point; you are examining a witness who was merely the manager of one of the parties defendant and not himself a defendant, to a contract which is before you, a part of which you have asked for and which you have received, a written contract.

Q. Do you mean to say that you have no knowledge whatever of the terms of this agreement or of the parties with whom you were acting except what is expressed by that written contract?

A. Yes, sir; that is what I state.

Q. You say that under your oath?

A. Yes, sir.

Q. How many conversations did you have with Mr. Searles upon this subject?

A. I do not remember.

Q. Where did you first meet Mr. Searles when you had any conversation upon the question of selling you stock to him?

A. I met him at my house at Germantown.

Q. When was that?

A. In February a year ago—February of last year.

Q. Did he come at your request to your house?

(322) A. Mr. Searles came to my house because I was ill at that time, and was unable to get out; I probably would have met him elsewhere.

Q. You did not answer my question. (Question repeated.)

A. As nearly as I can remember the circumstances were these: I had an appointment to meet Mr. Searles somewhere and could not keep it because I was too ill to leave the house and I advised him of that, and then he came to my house—said that he would see me at my house.

Q. When did you have an appointment to meet him? Who suggested that appointment originally?

A. My recollection is that Mr. Searles suggested it.

Q. How did he suggest it to you?

A. I have forgotten whether he sent me a note or a telephone message; he sent me a message; I think it was by telephone from New York, but I am not positive as to that.

Q. What was the subject of that message—what was the substance of it?

A. Asking me to meet him, an appointment, that is all.

Q. For what purpose?

A. Nothing further was said than that; no purpose was suggested or mentioned.

Q. Are you positive that that was not in writing?

A. I think it was not.

Q. Between the time that you received this message from Mr. Searles and the time that you met him at your house, did you have any written communication with him?

A. I think not.

Q. Are you sure of that?

A. Yes, sir: I think I——

Q. Had you any knowledge for what purpose he was to call upon you or have an interview with you before he came to your house?

A. When you ask me that you mean positive information; of course we can guess, we can infer, but I suppose I must take it to mean positive.

Q. I do not mean a rumor or hearsay, but when I say knowledge I mean such knowledge as would give you information of the purpose of his calling upon you. (323)

A. I had no positive knowledge; I guessed.

Q. What did Mr. Searles say to you when he came to you at your house in Germantown?

A. He asked me whether I thought our stockholders would sell their stock.

Q. That is all he said, is it?

A. I cannot remember all the conversation.

Q. Give me the substance of the conversation?

A. The conversation resulted in that agreement.

Q. Was that agreement made that day?

A. The agreement was made afterwards, but the general basis of the agreement was talked over substantially as the agreement is made up.

Q. Had you at that time had any conversation with the other stockholders of the Delaware Sugar House in reference to the sale?

A. I think not at that time; I communicated with them as soon as I had seen Mr. Searles.

Q. Who did you communicate with?

A. Why, with Mr. Vaughn Merrick, who represented one-half of the stock, and with other stockholders in New York.

Q. How much of that stock did you own yourself?

A. I, personally, owned fourteen shares of it.

Q. But you represented how many more shares?

A. Well, I represented almost all of the other half of the stock, directly or indirectly.

Q. Did you inform Mr. Merrick of the terms of the proposed agreement?

A. I did.

Q. You informed him that this agreement was made upon behalf of Mr. Searles subject to the condition that the requisite assent to the in-
(324) crease of twenty-five million of the | capital stock of the American Sugar Refining Company should be obtained?

A. I don't remember that I mentioned that condition or not.

Q. That was of no importance, that condition? Did you regard that condition as of any importance?

A. I did not think much of that condition; no; I don't think it made much impression upon me.

Q. You mean to say that in the negotiation and sale of this stock to Mr. Searles, the fact that he imposed a condition which might defeat the sale entirely made no impression upon your mind?

A. It is difficult in looking back to say which one of the conditions did make the most impression, but my recolleetion is I did not attach so much importance to that, the matters of the price and mode of payment—

Q. Why did not you attach importance to that?

A. I do not know.

Q. You mean to say that in making agreements you do not attach any importance whatever to the mode of payment or the time of payment?

A. No; I do not mean to say that at all.

Q. You were making sale of a valuable interest, were you not?

A. Yes, sir.

Q. For a very considerable sum of money?

A. Yes, sir.

Q. And do you mean to say that the time of payment and the mode of payment did not make any impression upon your mind?

A. I did not say that. You asked me whether the fact that one of the conditions was that the assent of the stockholders of the American Sugar Refining Company was necessary, whether that condition made much impression upon me.

Q. That is what I am asking you now. (Question repeated.)

A. I do not say that.

(325) Q. Did it make an impression upon your mind?

A. The time of the payment?

Q. And the mode of payment?

A. Yes, sir.

Q. Did you ask Mr. Searles why he put such a stipulation as that in this agreement?

A. I did not.

Q. What did you understand by that stipulation?

A. Only what it states.

Q. Give us your understanding of it. What did you understand from Mr. Searles before the agreement was reduced—

(Objected to. Question withdrawn.)

Q. What did you understand from Mr. Searles at the meeting at your house, before the contract was drawn, was to be the time of payment and the mode of payment for the transfer of your stock to him before the agreement was made?

A. The time of payment I do not recollect; I think the agreement states that.

Q. I am not asking you about the agreement; I am asking you about your conversation with Mr. Searles.

A. I say I have forgotten the date as to the time of payment; the mode of payment was to be in shares of the American Sugar Refining Company.

Q. Did Mr. Searles tell you that before those shares were issued it was necessary to obtain the consent of the stockholders for the issuing of new stock?

A. I think he did.

Q. Did not he tell you that he would not undertake to make any binding arrangements about it except with the stipulation that that consent was to be obtained?

A. That was a condition of the agreement.

Q. I am not asking you about the agreement; I am asking you about your conversation with Mr. Searles at your house before the agreement was drawn; did not he then inform you | that he could only make this (326) agreement subject to obtaining the consent of the stockholders of the American Sugar Refining Company to issuing twenty-five million dollars of new stock?

A. It is probable that he did; I have no recollection on that point as to what was said.

Q. Of course you told that to Mr. Merrick, did you not, when you informed him of your conversation with Mr. Searles?

A. I don't remember.

Q. Do you mean to say that in talking with Mr. Merrick, who represented half of the stock of this Delaware Sugar House, and proposing to him that he should part with that stock, that you did not inform him that payment for it was to be made in the stock of the American Sugar Refining Company, which was to be issued by the consent of the American Sugar Refining Company before this scale could be consummated?

A. I have already stated that that condition made very little impression upon me at the time.

Q. That is not an answer to my question.

Mr. Wagner:—If I am right, the witness has not finished his answer.

The Witness:—You want to know in substance what I stated to Mr. Merrick?

The District Attorney:—I would like you to answer my question first, if you can answer it, and then I will ask you another question.

Q. (Question repeated)

A. You put two or three clauses in there, some of which I can answer and another which I cannot. I stated to Mr. Merrick substantially, I asked him if he was willing to sell his stock, exchange his stock for stock of the American Sugar Refining Company; that is substantially what I asked him.

(327) Q. Did you tell him that Mr. Searles had been to see you about it?

A. I did.

Q. Did you tell him that this sale could not be consummated until the American Sugar Refining Company had consented to the increase of the stock?

A. I don't remember whether I did or not.

Q. What is your best recollection on the subject?

A. This was a matter which took some little time to complete; it was not closed at the first interview, and these conditions were brought up to the stockholders.

Q. Mr. Searles told you at your first meeting that his carrying out this agreement depended upon the increase of the capital stock of the American Sugar Refining Company, did he not?

A. I do not remember. I would like to say this: That it is difficult to remember the details of conversations which led up to this agreement.

Q. I am asking you about the most important part of that agreement, without the payment to you of the consideration of that stock of the American Sugar Refining Company that agreement was absolutely nothing, and you, as a business man, certainly must know——

A. We did not make any agreement on that day.

Q. When you were talking about that agreement you certainly must know that the method and the time of payment was to you the most important part of that agreement, except, perhaps, the amount that you were to receive. Did not Mr. Searles inform you, in so many words, substantially, that he was only able to arrange certain details of it, but that before the agreement could be consummated it was necessary that this capital stock should be increased?

A. I don't remember.

Q. Do you remember whether you told that to Mr. Merrick or not?

A. I do not.

(328 Q. Do you swear that you did not tell it to Mr. Merrick?

A. I do not.

Q. You do not swear then that you did not tell Mr. Merrick that you had had a talk with Mr. Searles upon this subject, and that he had agreed to pay you a certain price for your stock in the American Sugar Refining Company and that that payment would be carried out, providing the company agreed to increase its stock?

A. Mr. Searles did not agree to pay any price. I have stated it was not an agreement at that time; it was only preliminary negotiations Searles asked what we would do.

Q. I am asking you whether you are willing to swear that you did not inform Mr. Merrick at the first conversation that you had with him upon the subject that the carrying out of the talk which you had with Mr. Searles depended upon the issuing of new stock by the American Sugar Refining Company?

A. I do not remember that I stated so.

Q. Do you swear you did not state it?

A. I do not.

Q. It is altogether likely that you did state it, is it not?

A. I don't know; I don't remember.

Q. You did not withhold from Mr. Merrick any knowledge you had on the subject?

A. Nothing, nothing whatever.

Q. Do you swear that Mr. Searles did not tell you that he was acting on behalf of the American Sugar Refining Company?

A. My recollection is that Mr. Searles did not mention the name of the American Sugar Refining Company.

Q. I am not asking you that question; I ask you whether you swear under your oath that Mr. Searles did not tell you that he was acting on behalf or the American Sugar Refining Company?

A. That is the best answer I can give.

Q. Answer that yes or no, and make any explanation you desire.

A. My recollection is that Mr. Searles did not mention the name of (329) the American Sugar Refining Company.

Q. Are you willing to take your oath that he did not tell you that?

A. I have already answered that.

Q. You have not answered that question. Do you refuse to answer that question?

A. I have stated, as nearly as I can remember, Mr. Searles did not mention the name of the American Sugar Refining Company?

Q. Are you positive enough to testify, under your oath, that he did not tell you that he was acting for the American Sugar Refining Company?

A. As nearly as I can remember he did not mention the name of the American Sugar Refining Company.

Q. Are you willing to swear that he did not allude to the American Sugar Refining Company, perhaps, by some other name, like the Sugar Trust or American Company, or in such a manner that you understood that he was acting for the parties whose stock you were to receive?

A. I do not remember that he did.

Q. I am asking you if you would swear that he did not.

A. I cannot recall the details of that conversation any more accurately than I have already stated.

Q. You have stated that you do not know; now, are you willing to swear that you did not understand that Mr. Searles was acting on behalf of the Trust or American Sugar Refining Company?

A. What do you mean by "understand?" Does that mean positive knowledge or guess?

Q. I am not a dictionary and you will have to use your own judgment of what the word "understand" means. You know what it means.

By Mr. Ralston:

Q. Did you guess at it?

A. I don't know that I ought to testify to what I guessed. | It was (330) very well known, of course, as has already been testified to, that there was a rumor on the street, in the papers, that the sugar refineries were going to sell out, everybody heard of that.

By the District-Attorney:

Q. Did you understand or believe that Mr. Searles was acting for and on behalf of the American Sugar Refining Company when he entered into negotiations with you?

(Mr. Ingham asks the witness to give a yes or no answer and states that he, the witness, is at liberty to make any explanations after giving his answer.)

A. Well, I say that I guessed that he was negotiating for the American Sugar Refining Company, but I had no positive knowledge of it.

By Mr. Ralston:

Q. You believed that he was, though?

A. I supposed that he was.

Q. And that supposition was sufficiently definite for you to act upon, was it not?

A. No action was necessary on that.

By the District Attorney:

Q. Did you own or represent about half of the stock of the Delaware Sugar House?

A. I suppose I had better say just exactly what I did represent. I represented in this case for myself fourteen shares; for S. Georgiana Crabb, twenty-five shares; Cassine G. Wilson, twelve shares, and for the Wilson minors eleven shares.

By Mr. Wagner:

Q. How many is that altogether?

A. Sixty-two shares.

By the District Attorney:

Q. Who is Albert Bunker?

A. My brother.

Q. Who was John Birbeck?

A. An uncle of mine.

(331) Q. Who is R. H. Howell?

A. They were agents of the house: all of the Howells were commercial agents of the house, for the Delaware Sugar House.

Q. Did you represent in the board this stock of your brother Albert, the estate of John Birbeck; did you vote that stock and generally take care of their interests in the company?

A. That stock of John Birbeck was represented by Herbert Worth, who was his executor, who was generally present at the meetings.

Q. Did you receive the shares of the American Sugar Refining Company in accordance with the terms of this agreement?

A. Only my portion of them.

Q. How much did you get yourself?

A. Is not the agreement sufficient to cover that point?

Q. If you know you must answer. You must know how many shares you got. Do you know?

A. Yes, sir: I do know.

Q. Tell me how many you got then?

A. I don't know; that is a personal matter; I don't know that I——

Q. Do you refuse to answer that question?

The District Attorney:—Mr. Wagner, do you instruct him to answer the question or not?

Mr. Wagner:—It does not seem to me to be a relevant question. If you insist upon it, then the witness can decline if he sees fit.

Q. Did you get three hundred and fifteen shares of the American Sugar Refining Company?

The Witness:—Is it necessary to answer that question, Mr. Wagner?

Mr. Wagner:—I do not think the question is relevant.

The District Attorney:—Do you direct him not to answer?

Mr. Wagner:—The witness must use his own judgment. He says it (332) is a personal matter; he would rather be excused from answering, and then you carry the question still further. The witness must use his own judgment about answering it.

The Witness:—I would rather not answer.

Q. Who received the stock for Georgiana Crabb; to whom was that delivered?

A. I think that the stock was all delivered to Mr. B. H. Howell, of New York, and by him distributed. I received only my own portion of it.

Q. Did you receive it from him? Who did you receive it from?

A. It was expressed to me by him.

Q. By Mr. Howell?

A. Yes, sir.

Q. When did you get it?

A. I think it must have been about in April; I have no record of the date.

Q. How long before the date of this agreement did Mr. Searles commence his negotiations with you; the agreement is dated March 8th 1892?

A. Probably two weeks.

Q. Did he inform you that he had obtained the Franklin Sugar Refinery?

A. He did not.

Q. Did he say anything to you about obtaining the Spreckels Refinery?

A. He did not.

Q. Did he inform you that the Knights had sold out to him also?

A. He did not.

Q. Did you ask him anything about it?

A. I did not.

Cross-examined. (333)

By Mr. Wagner.

Q. A good deal has been said to you about your knowledge on this subject. The agreement, if you will remember, is with John Searles, for account of whom it may concern; now, with that language before you, what is your recollection? In searching your recollection on the subject, do not you feel quite sure in your mind that Mr. Searles did not disclose to you, or any of the other stockholders, for whom he was acting, that he took good care not to do so; is that your best recollection on the subject?

A. Yes, sir; that he did not mention any.

Q. He did not disclose for whom he was acting?

A. Yes, sir.

Q. Now, as regards the assent of the stockholders of the American Sugar Refining Company; it was a condition which made no very marked impression upon your mind, as you have told us; your main thought or main interest was in the quantity of stock you were to get, was it not?

A. Yes, sir.

Q. That made a clear impression upon your mind, the quantity of stock you were to get in exchange for the stock of the Delaware Company?

A. Yes, sir.

Q. And you were not so much concerned as to where the stock should come from?

A. No.

Q. So that so far as you were concerned Mr. Searles might have been an entirely independent purchaser? Is there any doubt about that might have been entirely independent and might have made what conditions he liked as to the issue of the stock of other companies; all that you were concerned with was that he should give a certain amount of that stock and deliver it to you in exchange for yours; am I right?

(334) A. Yes, sir; it was the amount of the stock and the value of the stock which concerned me.

Q. And these were the things, the amount of the stock and the value of the stock were the things which most concerned you, which made the most impression upon your mind?

A. That condition was a matter which concerned me chiefly.

By the District Attorney:

Q. The time when you were to get the stock did not concern you then, or whether you ever got it or not, or whether the sale was ever completed or not, that was of no interest or concern to you; is that so? All you wanted to know was that somebody had promised or had talked with you about paying you a certain amount of money, whether they ever paid to you or not was not—

A. The agreement of a responsible man was equivalent to a payment.

Q. Did you have any agreement with a responsible man?

A. Mr. Searles was a responsible man.

Q. Did he make an agreement on his own behalf? Did he agree to give you one cent for your stock? Did he agree to give you anything for your stock except upon the condition that the American Sugar Refining Company should authorize the increase of the capital stock of that company?

A. That was a condition.

Q. That made no impression on your mind?

A. (No answer.)

By Mr. Ralston:

Q. Do you know now that the American Sugar Refining Company bought out the Delaware Sugar House?

A. It has been disclosed since.

Q. Do you know it now?

A. I think I do; yes, sir.

Q. When did you find that out?

A. The acknowledgment of the American Company made publicly some time afterwards (335)

Q. Did not you find that out before you got your stock from them?

A. I did not know it of my own positive knowledge.

Q. Do you know it of your own positive knowledge now?

A. Yes; because they acknowledged it

Q. Did not you know it before you got your stock from them equally well?

A. I supposed it and guessed it?

By the District Attorney:

Q. What do you mean by acknowledging publicly?

A. In their published statement they admitted in their yearly reports.

Q. How do you know this was a yearly report of the American Sugar Refining Company?

A. Issued from their office with their signature.

Q. How do you know it is their signature?

A. I suppose we know positively.

By Mr. Ralston:

Q. Who sent this stock from the American Sugar Refining Company, do you know? Did you see any letters come with the stock?

A. I did not.

Q. You did not get it from that company, you got it from Mr. Howell?

A. Mr. Howell; yes, sir.

Q. You say you supposed and guessed at that time that they had bought it?

A. Yes, sir.

Q. What do you base that supposition and guess upon? was it not pretty good knowledge?

A. No; genernl talk, current reports.

By the District Attorney:

Q. Did not the fact that the payment was to be made in that stock and that it was necessary to get the assent of that | company also afford you a little knowledge where your stock was going to go? (336)

A. It enabled me to suppose where it came from.

Q. You could give a pretty close guess, could you not?

A. Yes, sir.

Subject to making an application to the Circuit Court for an order upon Mr. Searles to answer the questions which he declined to answer under the instruction of counsel, the case for the United States is closed in chief.

Adjourned until Wednesday, February 15th, 1893, 3 P. M.

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(337) And afterwards, to wit, on the 19th day of January, A. D. 1894, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument on final hearing, and having been argued by counsel for the respective parties, and the Court not being fully advised in the premises takes further time for consideration thereof.

And afterwards, to wit, on the 30th day of January, A. D. 1894, come the parties aforesaid, by their counsel aforesaid, and the Court now being fully advised in the premises render the following opinion, viz.:

(338) CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES,

vs.

E. C. KNIGHT CO., *et al.*

BUTLER, J.,

The bill charges in substance, as follows:

E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company and the Delaware Sugar House, were, until on or about March 4th, 1892, independently engaged in the manufacture and sale of refined sugar. That they were competitors with the American Sugar Refining Company and with one another; and that they were engaged in trade with the several States and with foreign nations. That the American Sugar Refining Company had, prior to March 4th, 1892, obtained the control of all the sugar refineries in the United States, with the exception of the Revere of Boston, and the refineries of the said four defendants. That the Revere produced annually about two per cent. and the said four defendants about thirty-three per cent. of the total amount of sugar refined in the United States. That in order that the American Sugar Refining Company might obtain complete control of the production and price of refined sugar in the United States, it and John E. Searles, Jr., acting for it, entered into an unlawful and fraudulent scheme to purchase the stock &c. of the said four defendants by which they attempted to obtain control of all the sugar refineries in | this district (339) for the purpose of restraining the trade thereof among the other States. That in pursuance of this scheme, on or about March 4th, 1892, John E. Searles, Jr. entered into a contract with the defendant Knight Company and individual stockholders named for the purchase of all the stock of the said company, and subsequently delivered to the said defendants in exchange therefor shares of the American Sugar Refining Company. That on or about the same time the said Searles entered into a similar contract with the Spreckels Company and individual stockholders and made a similar contract with the Franklin Company and stockholders, and with the Delaware Sugar House and stockholders.

The bill further avers that the American Sugar Refining Company monopolizes the manufacture and sale of refined sugar in the United States, and controls the price of sugar. That in making the said contracts the said Searles and the American Sugar Refining Company combined and conspired with the other defendants named to restrain trade and commerce in refined sugar among the several States and foreign nations. That the said contracts were made with intent to to enable the said American Sugar Refining Company to monopolize the manufacture and sale of refined sugar among the several States.

The material facts proved are that the American Sugar Refining Co., one of the defendants, is incorporated under the laws of New Jersey, and has authority to purchase, refine and sell sugar; that the Franklin Sugar Refinery, the E. C. Knight Co., The Spreckels Sugar Refinery, and the Delaware Sugar House, were incorporated under the laws of Pennsylvania, and authorized to purchase, refine and sell sugar; that the four latter Pennsylvania | Companies were located in Philadelphia, (340) and prior to March 1892 produced about thirty-three per cent. of the total amount of sugar refined in the United States, and were in active competition with the American Sugar Refining Co., and with each other, selling their product wherever demand was found for it throughout the United States; that prior to March, 1892, the American Sugar Refining Co. had obtained control of all refineries in the United States, excepting the four located in Philadelphia, and that of the Revere Co. in Boston, the latter producing about two per cent. of the amount refined in this country; that in March 1892 the American Sugar Refining Co. entered into contracts (on different dates) with the stockholders of each of the Philadelphia corporations named, whereby it purchased their stock, paying therefor by transfers of stock in its company; that the American Sugar Refining Co. thus obtained possession of the Philadelphia refineries and their business; that each of the purchases was made subject to the American Sugar Refining Co. obtaining authority to increase its stock $25,000,000. that this assent was subsequently obtained and the increase made; that there was no understanding or concert of action between the stockholders of the several Philadelphia companies respecting the sales, but that those of each company acted independently of those of the others, and in ignorance of what was being done by such others; that the stockholders of each company acted in concert with each other, understanding and intending that all the stock and property of the company should be sold; that the contract of sale in each instance left the sellers free to (341) establish other | refineries and continue the business if they should see fit to do so, and contained no provision respecting trade or commerce in sugar, and that no arrangement or provision on this subject has been made since; that since the purchase the Delaware Sugar House Refinery has been operated in conjunction with the Spreckels Refinery, and the E. C. Knight Refinery in connection with the Franklin, this combination being made apparently for reasons of economy in conducting the business; that the amount of sugar refined in Philadelphia has been increased since the purchases; that the price has been slightly advanced since that event, but is still lower than it had been for some years before, and up to within a few months of the sales; that about ten per cent. of the sugar refined and sold in the United States is refined in other refineries than those controlled by the American Sugar Refining Co.; that some additional sugar is produced in Louisiana and some is brought from Europe, but the amount is not large in either instance.

The object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country.

Are the Defendant's acts as above shown, prohibited by the Statute of 1890, relating to trade and commerce? The provisions involved, are as follows:

"SECT. 1. Every contract, combination in the form of trust or other-"wise, or conspiracy, in restraint of trade or commerce among the sev-"eral States, or with foreign nations, is hereby declared to be illegal. (342) "Every person who shall make any such contract or engage in | any such "combination or conspiracy, shall be deemed guilty of a misdemeanor, "and, on conviction thereof, shall be punished by a fine not exceeding "five thousand dollars, or by imprisonment not exceeding one year, or "by both said punishments, in the discretion of the court.

"SECT. 2. Every person who shall monopolize, or attempt to monopo-"lize, or combine or conspire with any other person or persons, to mo-"nopolize any part of the trade or commerce among the several States, "or with foreign nations, shall be deemed guilty of a misdemeanor, and, "on conviction thereof, shall be punished by fine not exceeding five "thousand dollars, or, by impisonment not exceeding one year, or by "both said punishments, in the discretion of the court.

"SECT. 4. The several Circuit Courts of the United States are hereby "invested with jurisdiction to prevent and restrain violations of this act; "and it shall be the duty of the several District Attorneys of the United "States, in their respective districts, under the direction of the Attorney "General, to institute proceedings in Equity to prevent and restrain "such violations. Such proceedings may be by way of petition setting "forth the case and praying that such violations shall be enjoined or "otherwise prohibited. When the parties complained of shall have been "duly notified of such petition the court shall proceed, as soon as may "be, to the hearing and determination of the case; and pending such "petition and before final decree, the court may at any time make such "temporary restraining order or prohibition as shall be deemed just in "the premises.

The principal questions raised are: (343)

First. Do the facts show a contract, combination or conspiracy to restrain trade or commerce, or a monopoly within the legal signification of these terms?

Second. Do they show such contract, combination or conspiracy to restrain or monopolize trade or commerce "among the several States or with foreign nations?"

Third. Can the relief sought be had in this proceeding?

In the view I entertain the first and third need not be considered. The second must receive a negative answer, and this will dispose of the controversy.

The Federal Government possesses no jurisdiction over the contracts, business or property of individuals within the States—except to collect revenue for its support. Its powers are derived exclusively from the Constitution. It has none other than such as are directly or impliedly conferred by that instrument; and the latter contains no suggestion of authority to intermeddle with such property rights. By the eighth section of Article 1st, Congress is empowered "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." In pursuance of this power the statute of 1890 was enacted; and as the terms employed show, Congress was duly careful to keep within the limits of its authority. It is "trade and commerce among the several States and with foreign nations" that the Statutes seek to guard against restraint or monopoly.

The contracts and acts of the defendants relate exclusively to the acquisition of sugar refineries and the business of sugar refining in Pennsylvania. (344) They have no reference and bear no relation to commerce between the States or with foreign nations. Granting therefore that a monopoly exists in the ownership of such refineries and business (with which the laws and courts of the State may deal) it does not constitute a restriction or monopoly of interstate or international commerce. The latter is untouched, unrestrained and open to all who choose to engage in it. The plaintiff contends however, that such monopoly in refineries and refining incidentally secures a monopoly of commerce among the States. This position however is unsound; the deduction is unwarranted. The alleged control of refining does not of itself secure such commercial monopoly; and at present none exists. The most that can be said is that it tends to such a result; that it might possibly enable the defendants to secure it, should they desire to do so. Whether it would or not depends on their ability with this advantage to control such commerce. They have not tested this ability by attempting to control it, nor shown a disposition to do so. They sell their product, and purchasers may use it in such commerce, or otherwise as they choose. At present the defendants neither have, nor have attempted to secure, such com-

mercial monopoly. As before stated, if they have a monopoly it is in refineries and refining, alone—over which the plaintiff has no
(345) jurisdiction. If they should retire from business, close their | refineries, or devote them to other purposes, the plaintiff could not object. This might and doubtless would indirectly produce some disturbance of or interference with such commerce, but it would not bring the defendants or their property within the jurisdiction of Congress. Numerous instances might be cited, where contracts, business arrangements and combinations indirectly affect interstate and international commerce without bringing the parties to them or their property within this jurisdiction. It is the stream of commerce flowing across the States, and between them and foreign nations that Congress is authorized to regulate. To prevent direct interference with or disturbance of this flow alone, was the power granted to the Federal Government. Congress has therefore no authority over articles of merchandise or their owners, or contracts or combinations respecting them, which have not entered into this stream, or having entered have passed out. It may prohibit and punish all acts which are intended and directed to restrain or otherwise interfere with or disturb such commerce, but it can go no further. To extend this authority to business transactions which have no direct relation to this commerce, but which may incidentially affect it, and to ownership and rights in property not involved in such commerce, because it may possibly become so involved, would be unwarranted by the terms of the constitutional provision, or the Statute—would draw within the jurisdiction of Congress most of the business transactions and property of individuals within the States, and would
(346) oust the jurisdiction of the States, accordingly, | a large proportion of the contracts which men enter into, and of the changes which they make in their business and business relations, may and probably do affect such commerce. The diminution or increase of production in agriculture or manufactures, changes from one branch of business or trade to another, all incidentally tend to this result. State legislation prohibiting or restraining the manufacture or sale of certain articles of merchandise, or increasing their cost by exacting license fees, have the same indirect tendency. Such legislative restraint of the manufacture or sale of poisons and alcoholic liquors, and even the increase in the cost or price of property by taxation, could only be sustained by favor of the Federal Government, in a different view of its power.

The discussion need not be extended; the question is not new. It was fully considered in a case which arose under the Statute In Re Green 52 Fed. Rep. 104, and the opinion of Jackson, J. (now of the Supreme Court) is so clear and satisfactory that I am restrained from quoting what he says only by the desire to be brief. Vecie *vs.* Moore, 14 Howd. 568, 574, Co. *vs* Errol, 116 U. S. 517, Kidd *vs.* Pearson, 128 U. S., 1 are to the same effect.

The cases of the United States *vs.* Greenhout, 50 Fed. Rep. 469, and in re Corning 51 Fed. Rep. 213, cited by the plaintiff are in affirmance of this view, rather than against it. Every element of combination and monopoly shown here was averred in the indictments under consideration
(347) there. It was held however | that no offence against the statute was

set out, no interference with inter-state or international commerce being charged. The cases did not fail through matter of form or technically, but because the facts averred did not constitute an offence against the United States.

In the cases of United States *vs.* The Jellico Mountain Coal Co., 46 Fed. Rep. 432, The American Biscuit Co. *vs.* Klotz, 44 Fed. Rep. 721, and the Dueber Watch Case Manf. Co. *vs.* The Howard Watch Case Co., 55 Fed. Rep. 851, cited by the plaintiff, this question was not, considered or raised.

The People *vs.* The American Sugar Refining Co., 7 Rey & Corp. (Cal.) 83, and People *vs.* The North River Sugar Refining Co., 16 N. Y. Civ. Pro. 1 & 61 Sup. C. (N. Y.) 354, were suits in State courts and involved questions of State law only.

The bill must be dismissed with costs. Endorsed: No. 38. April Sess., 1892. U. S. C. C. E. D. of Pa. U. S. of A. *vs.* E. C. Knight Co., *et al.* Opinion of Butler, J. ordering bill to be dismissed with costs.

Filed Jan. 30, 1894, Samuel Bell, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA. (348)

THE UNITED STATES OF AMERICA,	No. 38.
vs.	April Sess.,
E. C. KNIGHT COMPANY, *et al.*	1891.

And now, to wit, this second day of February A. D. 1894, this cause having been brought to final hearing upon the pleadings and proofs, and counsel for the parties respectively having been heard thereupon, and the same having been duly considered by this Court, it is ordered, adjudged and decreed that the bill of complaint in this cause be, and the same is hereby dismissed with costs to the defendants.

By the Court:

Endorsed: 38. April Sess., 1892. C. C. U. S. E. D. of Pa. U. S. of A. *vs.* E. C. Knight Co., *et al.* Decree dismissing bill with costs. Filed Feb. 2, 1894, Samuel Bell, *Clerk.*

(349) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLNANIA.

UNITED STATES,
vs.
E. C. KNIGHT, *et al.*
} U. S. C. C.

To the Honorable the Judges of the said Court:

The petition of the United States, complainant in the above entitled cause, respectfully shows, that it is aggrieved by the decree entered in the above entitled cause on the second day of February, A. D. 1894, and prays your Honorable Court to allow an appeal from said decree to the U. S. Circuit Court of Appeals for the Third Circuit, the petitioner filing herewith assignments of error, as follows:

1. That the court erred in dismissing the bill of complaint.

2. That the court erred in not granting to the complainant the relief prayed for in the bill of complaint.

3. That the court erred in holding that the facts in this case do not show a contract, combination or conspiracy to restrain or monopolize trade or commerce among the several States or with foreign nations.

The UNITED STATES by its
Atty. ELLERY P. INGHAM.

Endorsed: No. 38. April Sess. 1892, C. C. U. S. E. D. of Pa. The U. S. of A. *vs.* E. C. Knight Co. *et al.* Petitition for appeal and assignment of errors. Filed Feb. 6, 1894, Samuel Bell, Clerk.

(350) UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES,

To E. C. Knight Company, Spreckels Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, Edward C. Knight, Jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, Wm. W. Frazier, Alfred C. Harrison, Wm. H. Harrison, J. Vaughn Merrick, W. H. Merrick, Claus Spreckels, The American Sugar Refining Company, John E. Searles, Jr., and Mitchell Harrison. Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States in and for the Eastern District of Pennsylvania in the Third Circuit wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William Butler, Judge holding Circuit Court of the United States this 6th day of February, in the year of our Lord one thousand eight hundred and ninety-four.

WM. BUTLER.

I except service for the within named defendants.

JOHN G. JOHNSON,
Plf. Atty.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *sct.* (351)

I, Samuel Bell, Clerk of the Circuit Court of the United States of America, for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certifiy the following to be a true and faithful copy of the original pleas and proceedings in the case of the United States of America *vs.* E. C. Knight Company *et al.* No. 38. April Session 1892, on file and now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 17th day of February in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

SAMUEL BELL,
Clerk of C. C.

216 And afterwards, to wit, on the 8th day of March, A. D. 1894, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument before the Hon. Marcus W. Acheson and Hon. George M. Dallas, circuit judges, and Hon. Edward T. Green, district judge, on the transcript of record from the circuit court of the United States in and for the eastern district of Pennsylvania, and having been argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards, to wit, on the twenty-sixth day of March, A. D. 1894, come the parties aforesaid, by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion, viz:

217 Circuit court of the United States, eastern district of Pennsylvania.

March term, 1894. No. 15.

THE UNITED STATES OF AMERICA
vs.
E. C. KNIGHT COMPANY ET AL.

Opinion of the court.

DALLAS, Cir J. There are three assignments upon this record. The first two aver in general terms that the court below erred in dismissing the bill of complaint and in not granting the relief thereby prayed. The third alone specifies the alleged error with particularity, and is in these words: "That the court erred in holding that the facts in this case do not show a contract, combination, or conspiracy to restrain or monopolize trade or commerce among the several States or with foreign nations." This assignment correctly presents the only question which the case involves.

The bill filed on behalf of the United States is founded wholly upon the act of Congress of July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies." Proceed- 218 ings, such as have been instituted and pursued in this instance, "to prevent and restrain violations of this act," are authorized and directed by its fourth section, and these defendants are charged with violation of its first two sections, which are as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"Section 2. Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

219 These sections relate, respectively, to restraint of trade and to monopoly, but, as to both, with respect only to "trade or commerce among the several States or with foreign nations;" and upon the application of this restrictive language of the law to the facts of this case we base our judgment. The learned judge who heard the cause in the circuit court states, in the opinion filed by him, that—

"The material facts proved are that the American Sugar Refining Co., one of the defendants, is incorporated under the laws of New Jersey, and has authority to purchase, refine, and sell sugar; that the Franklin Sugar Refinery, the E. C. Knight Co., the Spreckels Sugar Refinery, and the Delaware Sugar House were incorporated upon the laws of Pennsylvania, and authorized to purchase, refine, and sell sugar; that the four latter Pennsylvania companies were located in Philadelphia, and prior to March, 1892, produced about thirty-three per cent of the total amount of sugar refined in the United States, and were in active competition with the American Sugar Refining Co. and with each other, selling their product wherever demand was found for it throughout the United States; that prior to March, 1892, the American Sugar Refining Co. had 220 obtained control of all refineries in the United States, excepting the four located in Philadelphia and that of the Revere Co., in Boston, the latter producing about two per cent of the amount refined in this country; that in March, 1892, the American Sugar Refining Co. entered into contracts (on different dates) with the stockholders of each of the Philadelphia corporations named, whereby it purchased their stock, paying therefor by transfers of stock in its company; that the American Sugar Refining Co. thus obtained possession of the Philadelphia refineries and their business; that each of the purchases was made subject to the American Sugar Refining Co. obtaining authority to increase its stock $25,000,000; that this assent was subsequently obtained and the increase made; that there was no understanding or concert of action between the stockholders of the several Philadelphia companies respecting the sales, but that those of each company acted independently of those of the others and in ignorance of what was being done by such others; that the stockholders of each company acted in concert with each other, understanding and intending that all the stock and property should be sold; that the contract of sale in each instance left the sellers free to 221 establish other refineries and continue the business if they should see fit to do so, and contained no provision respecting trade or commerce in sugar, and that no arrangement or provision on this subject has been made since; that since the purchase the Delaware Sugar House Refinery has been operated in conjunction with the Spreckels Refinery, and the E. C. Knight Refinery in connection with the Franklin, this combination being made apparently for reasons of economy in conducting the business; that the amount of sugar refined in Philadelphia has been increased since the purchases; that the price has been slightly advanced since that event, but is still lower than it had been for some years before and up to within a few months of the sales; that about ten per cent of the sugar refined and sold in the United States is refined in other refineries than those controlled by the American Sugar Refining Co.; that some additional sugar is produced in Louisiana and some is brought from Europe, but the amount is not large in either instance.

The object in purchasing the Philadelphia refineries was to obtain a a greater influence or more perfect control over the business of refining and selling sugar in this country."

222 This finding of the facts has not been made the subject of any assignment of error under the 11th rule of this court, and its substantial correctness is, we believe, conceded. It is, however, quoted at length merely for the purpose of showing the general nature of the case; the only essential fact, and of that there is no doubt, being that the questioned conduct of the defendants does not, according to our view of the law, concern interstate or foreign commerce. There is no evidence whatever that the defendants have directly monopolized, or have attempted, combined, or conspired to directly monopolize any part of the trade or commerce among the several States or with foreign nations, or that they have contracted, combined, or conspired in direct restraint of such trade or commerce. The utmost that can be said, and this for the present purpose may be assumed, is that they have acquired control of the business of refining and selling sugar in the United States. But does this involve monopoly, or restraint of foreign or interstate commerce? We are clearly of the opinion that it does not. The particular language of the act which is now under consideration was manifestly derived from the clause of the Constitution by which Congress is empowered to "regulate commerce with foreign nations and among the several States;" and the authorities are distinctly to the effect that this grant of power does not include the regulation of manufactures or productive industries of any sort, even where their
223 product is made, or is intended or contemplated to be made, the subject of commerce beyond the territory of the State where the manufactory or other producing industry is situated or operated. Manufacture and commerce are two distinct and very different things; the latter does not include the former. Buying and selling are elements of commerce, but something more is required to constitute commerce, which, "strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities."

Enough has been said to indicate the ground upon which our conclusion is this case has been reached, and we do not deem it necessary to say more, inasmuch as the subject has very recently been considered and passed upon in the case of Greene (52 Feb. Rep., 104) by Judge Jackson (now one of the justices of the Supreme Court), in whose opinion the earlier cases are sufficiently referred to.

The decree of the circuit court is affirmed.

(Endorsed:) United States circuit court of appeals for the third circuit. No. 6. March term, 1894. United States of America, appellant, vs. E. C. Knight Co. et al. Opinion of the court by Dallas, J. Filed March 26, 1894.

224 United States circuit court of appeals, third circuit.

No. 6. March term, 1894.

THE UNITED STATES OF AMERICA, appellant. *vs.* E. C. KNIGHT COMPANY ET AL. } Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

Philadelphia, March 26, 1894.

BY THE COURT,
M. W. ACHESON,
Cir. J.

225 In the United States circuit court of appeals for the third district

UNITED STATES
vs.
E. C. KNIGHT, ET AL.

To the honorable judges of said court:

The petition of the United States, complainant in the above entitled cause, respectfully shows, that it is aggrieved by the decree entered in the above entitled cause on the 26th day of March, A. D. 1894, and prays your honorable court to allow an appeal from said decree to the Supreme Court of the United States, the petitioner filing herewith assignments of error as follows:

1. That the court erred in dismissing the bill of complaint.
2. That the court erred in not granting to the complainant the relief prayed for in the bill of complaint.
3. That the court erred in holding that the facts in this case do not show a contract, combination, or conspiracy to restrain or monopolize 226 trade or commerce among the several States or with foreign nations.

And now, to wit, this 26th day of March, A. D. 1894, upon hearing the within petition of the United States, and it appearing that the matter in controversy in said suit exceeds $1,000.00, besides costs, it is directed that the appeal shall be allowed.

M. W. ACHESON, *Cir. J.*

227 UNITED STATES OF AMERICA, *ss.*

The President of the United States to E. C. Knight Company, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, Delaware Sugar House, Edward C. Knight, jr., Thomas Cochran, Frederick D. Langenheim, Richard E. Clay, George Franklin Davis, Edward Browning, C. A. Spreckels, Louis Spreckels, Peter A. Smith, Charles Watson, Charles C. Harrison, Wm. W. Frazier, Alfred C. Harrison, Wm. H. Harrison, J. Vaughn Merrick, W. H. Merrick, Claus Spreckels, The American Sugar Refining Company, John E. Searles, jr., and Mitchell Harrison, greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court, to be holden at the city of Washington within thirty days, pursuant to appeal, filed in the clerk's office of the circuit court of appeals for the third circuit, wherein the United States of America is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Marcus W. Acheson, judge of the United States circuit court of appeals, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and ninety-four.

M. W. ACHESON, *Cir. J.*

227 On this 27th day of March, in the year of our Lord one thousand eight hundred and ninety-four, personally appeared Abram B. Myers, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to the attorneys of the parties named therein.

Sworn to and subscribed the 27th March, A. D. 1894.

ABRAM V. MYERS,
Deputy U. S. Marshal.
WM. V. WILLIAMSON,
Clerk.

We accept service of the within for all the defts. within save except the Dela. Sug. House.

JOHN G. JOHNSON.
JOHN E. PARSONS.
RICH. C. MCMURTRIE.

I accept service of the within.

THOMAS WAGNER,
For Delaware Sugar House, A. J. Vaughn and William H. Merrick.

228 UNITED STATES OF AMERICA, *sct.*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original transcript of record in the case of the United States of America, appellant, vs. E. C. Knight Company et al., No. 6, March term, 1894, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this day of March, in the year of our Lord one thousand eight hundred and ninety-four and of the Independence of the United States the one hundred and eighteenth.

[SEAL.] WILLIAM V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

(Indorsement on cover:) Case No. 15548. Term No. 1164. U. S. circuit court of appeals, third circuit. The United States, appellant, vs. E. C. Knight Company, Spreckels Sugar Refining Company et al. Filed March 29th, 1894.

○

As a fit introduction to the following brief we submit a quotation from the Senate debate upon the bill which after amendment became the statute of July 2, 1890.

Mr. Turpie. * * * "I apprehend that there are very few of us of this generation who have the slightest conception what this domain,—characterized as 'arising under the Constitution and laws of the United States,'— and very extensive thereby, shall yet embrace. Congress has seen fit heretofore to enter this domain very partially,—only upon one or two, or at most three, lines, and then to no very great distance. * * * The legislation respecting transportation, that respecting bankruptcy, and other partial legislation respecting National Banks are perhaps the only three instances in which we have done so. * * *

I believe that Congress has the same power to regulate interstate commerce, that the States have to regulate commerce within their own lines; and that as a matter of public policy we have the same right to make this proposed regulation, (affording civil remedies for those injured by Trusts, denouncing Trusts penally,) and the others which are contemplated,—as a State has under similar circumstances.* * *

I favor imperfect legislation upon the subject rather than to be silent. It is only by commencing and prosecuting these different projects to the form of law,—by entering this domain and asking the opinions of Federal tribunals as to our own jurisdictional power, that we shall ever be able to lay hands upon these conspiracies, which have done so much to injure the commercial credit and prosperity of interstate trade. * * *

There may be some difficulty in describing this offense. [" *Trusts* "], to define it accurately is impossible. It is like "*Fraud*." The courts have never even attempted to define that. In the statute of frauds its definition is very brief, 'A conveyance with intent to hinder or delay creditors.' Nevertheless, that definition has been made practical,—it has been made useful, and the statute has become a measure of first importance in the conduct of the business of the country.

The moment that we denounce these Trusts penally, and declare these fraudulent Trust-combinations to be conspiracies,—whether felonies or misdemeanors,—that moment under their own maxims the courts will feel themselves bound to carry out the intent and purpose of the legislation; and even to favor it,—so that the will of the people may prevail and not perish. This is a fundamental maxim."

Cong. Record, vol. 21, pp. 2556, '7: March 24, 1890.

[In an amendment then before the Senate, proposed by Mr. Reagan, (and which in the end went with the bill to the judiciary committee,) one definition of the word *Trust* was, *a combination to create a Monopoly.*]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

UNITED STATES, Appellant,

vs.

E. C. KNIGHT COMPANY AND OTHERS.

Brief for the United States.

The bill in this case was filed in the Circuit Court for Eastern Pennsylvania on the second of May 1892, in order to obtain an injunction to prevent and restrain certain acts made criminal by the statute of July 2, 1890 (26 Stat. 209), entitled "An Act to protect trade and commerce against undue restraints and monopolies,"—a copy of which may be found in the appendix.

At the hearing in the Circuit Court the bill was dismissed,—the learned Judge holding that no Federal question had been made out upon the proof; and that decree was affirmed in the Circuit Court of Appeals, at March Term last.

The acts made criminal by the statute referred to are, (sec. 1) *Conspiracies, &c. in restraint of interstate and foreign commerce;* and, (sec. 2) *Monopolizing, Attempting, or Conspir-*

ing &c. to monopolize, any part thereof. In order *to prevent and restrain such acts,* the Attorney General is authorized (sec. 4) to direct proceedings in equity to be instituted. Accordingly this suit has been brought under his direction.

The bill alleges that the American Sugar Refining Company, which may be considered as the principal defendant, has monopolized the manufacture of refined sugar, and also interstate commerce therein, within the United States; and that the other defendants have combined, conspired, &c., with it for this purpose. And the proof shows that the above-named Company is [May 2d, 1892] engaged in interstate commerce in refined sugar; and also that, by the aid of the other defendants, *within the first fifteen months of its existence, (January 1891,–March 1892,) it had purchased, and then held, from about 85 to about 98 per cent. of all the sugar refining business within the United States: refined sugar being consumed throughout the United States in proportion to population, and requiring interstate commerce in order to reach consumers within most of the States, containing much the larger part of that population.*

The remedy authorized by Section 4, being therefore one of *preventive,* and not penal, justice, the record in effect has aimed to state and show grounds for reasonable apprehension that a monopoly is impending as to that part of interstate commerce which concerns domestic refined sugar:—those grounds consisting in the monopoly already existing in the *manufacture* of that article by a corporation also engaged in interstate commerce therein,—refined sugar being likewise a result of vast yearly crops that are yearly consumed, and requiring an average movement thereof of more than sixty pounds during every second of time *by interstate commerce,* in order to satisfy the wants of consumers within those States which do not produce it.

The grounds for this application need not of course be themselves a direct violation of sections 1, and 2, of the statute of 1890. They may be, ex. gr., some action or some result of action which primarily is within the exclusive jurisdiction of a State,—but which so far as it threatens the peace and welfare of the United States, as competently defined by authority, is subject to preventive Federal police. And even if these grounds be of themselves such violation, this is important under section 4 only so far as it suggests a probability of further violations,—*to be prevented.*

As one alternative of the case for the Government it will accordingly be submitted *that the facts relied upon as grounds for this application are themselves a violation of the statute:* in other words,—that *inasmuch as refined sugar necessarily looks mainly to interstate commerce for means to enable it to fulfil its function as a necessary American food, it is,—so long as upon the market and undistributed among the various States, a subject-matter of interstate commerce so far as to render its monopoly at any time, in part a monopoly thereof.*

In other words as to this alternative,—when a marketable article of vast bulk is one the whole of which, because of ordinary and often recurring necessities of human life, *must* within the year, and so for every succeeding year, become a subject-matter of interstate commerce, and some part of which must always be such subject-matter, it is thereby one which is already, so to say, *under the label of that commerce;* and delay *previous* to the actual transit of some part thereof does not contradict the liability of the whole article (in any case in which, as in Monopoly, this is necessarily regarded as *a unit*) to Federal police and regulation, any more than delay *during* transit, (at warehouses, &c.) does ordinarily. In both cases such a rule, as is submitted, accords with principles already determined by the COURT. And besides, a strict compliance with its terms could easily be attained in practice. In either case the condition is at most virtually one of a mere *pause* in the operations of interstate commerce.

A trespasser is none the less such *with a continuando* because of recurring personal absences from land on which he has taken up a temporary abode. And if it be allowable for counsel to illustrate their conception in regard to a topic so large by instançing operations of nature of similar magnitude in departments that are more familiar: The great American interstate river, the Mississippi, as well in its first springs, quiet reaches, pools and even eddies, as where it is swiftest,—is at all times upon its way to the jetties and the Gulf.

A "*subject-matter*" of commerce of that nature, in order to preserve its character needs no more to be in a state of *action* ordinarily so called, than does a well ascertained "*instrumentality*." The *refined-sugar contents of a factory* are no less amenable to Federal police in regard to "monopoly," than are *merchant-ships at anchor*. Both are where they are, for the direct purpose of going elsewhere *viis et modis* of interstate commerce, and otherwise. And "monopoly" of course affects *as a unit* any class of goods to which it applies at all; i. e., it *infects* every part of that body when it infects any limb thereof. So that competently to police any part, the whole must be policed. And no more of course is *the policing or regulating authority* under necessity here to point out that particular portion of domestic refined sugar which in the end will go into interstate commerce as distinguished from that which will be consumed within the State.

Upon the whole, we may in this connection adopt, and quote from, the classical language of Gibbons v. Ogden, 9 Wheat. 1, 190: "The mind can scarcely conceive of a system for regulating commerce between [the States] *which shall* * * *be* CONFINED *to prescribing rules for the conduct of individuals* IN THE ACTUAL EMPLOYMENT OF BUYING AND SELLING, OR OF BARTER."

For a comment,—with the advantage of the light of those seventy years which have elapsed since that text was formulated, we quote as apropos to the present case, the following passage from the debate in the Senate upon Mr. Sherman's Bill,—the basis of the statute now under consideration. It will speak for itself.

Mr. PUGH: * * * "It is claimed that the Supreme Court, in the leading case of Brown vs. The State of Maryland, has crystallized the law as to the meaning of foreign commerce, by saying that it is 'imports in the original package remaining in the hands of the importer unbroken; and when and so long as the original package is in that condition it is the subject of foreign commerce. When it leaves his hands and the package is broken, and the goods go into the common mass of the property of the people of the State, then the commercial clause of the Constitution as to foreign commerce ceases to operate.'

Again, it is correctly stated that the Supreme Court, in three leading cases, has also defined the Constitutional meaning of 'Commerce among the States' to be in 'Articles, commodities, productions that become the subject of sale or barter and are in the custody of the carrier and in transitu, actually moving from one State to another to purchasers and consumers.' When these articles, commodities or productions of one State are in the condition of being moved, and are labelled for carriage and for sale or other disposition in another State, then they become subject to the operation of the commerce clause of the Constitution as to 'Commerce among the States.'

It is important that Senators should understand that these definitions of commerce with foreign nations and among the States relate exclusively to the *corpus* of foreign and interstate commerce,—the physical body, *the articles, productions, goods, wares and merchandise*, or *freight*. When these become the subject of regulation by Congress they can be reached only in the original unbroken package in the hands of the importer, or in transitu from one State to another.

But there is a wide difference in my humble judgment between the power of regulating the *corpus* of foreign and interstate commerce in its transition state between the producer and consumer, and the power of reaching and regulating individuals, companies and corporations who enter into agreements, trusts and combines to hinder, delay, interrupt, or in any way to prevent the full, free and fair transit and interchange of the *corpus* of commerce with foreign nations or among the States. The one jurisdiction is over the physical body: the other jurisdiction is over persons and corporations who conspire against the freedom, the health and well being of that physical body. * *

From what source did Congress derive power of passing the 'Act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals?' Here is an Act of Congress embracing diseased cattle that are not in transitu from one State to another; and also their owners who are not common carriers but citizens engaged in raising cattle for shipment and sale in other States. And those cattle, the *corpus* of commerce among the States, may be in the range,—not even penned for transportation. * *

The commerce clause of the Constitution has also furnished power to Congress to prevent the spread of cholera, and yellow fever, and smallpox, by prohibiting and punishing the transportation of goods infected, or that have been exposed to the infection of these epidemic diseases. There is no epidemic disease that is as destructive to human health and life as trusts and combines are destructive to the health and happiness and well being of industrial pursuits, and the freedom, growth and prosperity of our foreign and domestic commerce. * * The framers of the Constitution were practical men with a large share of common-sense, and not enough of uncommon-sense to interfere with the wisdom, safety and perfection of their great work." Cong. Rec. vol. 21, pp. 2558,–'9: March 24, 1890.

We will submit the record therefore as showing grounds for prevention, &c., which are valid as being, either—

1. Themselves a monopoly of interstate commerce; or—

2. Merely a threat thereof.

Before proceeding to its more important details, it seems convenient to notice briefly, and once for all, certain secondary points more or less connected with the defence below.

1. The claim in the answer of the American Sugar Refining Company (Art. 3), that if conduct condemned by the statute of 1890 *be authorized by State charters*—of the American Sugar Company and the other defendant corporations,—this will be a defense against the present proceedings, is of course untenable.

Indeed, upon the theory of Coke's celebrated definition of the "*institution,*" (as distinguished by him in the same connexion from the "*word,*") *Monopoly,*—that defence might *of itself, and without reference to its truth,* involve defendant corporations as monopolists even when other defendants (natural persons) would not be. Davenant's case, Moore 576, is to the effect that *a claim* by a corporation that its charter authorizes any *sole selling* in question—*even where this expressly forbids it* is sufficient to satisfy the phrase *grant or allowance by the King,* in that definition:—a definition worded (*3d Inst. 185,*) with some pains to include details in that case as well as in that of *Darcy* (Moore, 576, and 11, Co. 84, b), both of which are referred to in the context thereto, and had been argued by Coke as counsel. The *by-law* relied upon in the former case directly violated the *charter!* In arguing against it Coke had said: "But by-laws which establish *monopolies* [This is probably the earliest appearance of that word in English Reports] are against common right, and void. And therefore the Civil Law had a text that *monopolists shall forfeit their property, and that even rescripts in their favor shall be void.* The word Monopoly is derived from Greek words,—*apo tou monou kai poleomai,*—which in Latin is *solus vendere:* and because to appropriate sole selling to one to the exclusion of others, is against common good, by-laws made to induce monopolies (as does that in question,) are void." Moore, 580. In that case *the charter* had authorized the corporation to make *statutes and ordinances for the wholesome government of the fraternity as need might be,—"dummodo non sint contra leges et consuetudines regni."* p. 577. The monopoly under the by-law was therefore *not* according to the grant by the King,—the latter being perfectly conformed to law; just as in the present case it may be presumed that the New Jersey charter does not authorize the monopoly now in question. Still, as we have said, if the present case is to be governed by the principle in Coke's definition, the claim by the American Sugar Refining Company of authority under its charter does of itself involve it as a monopolist, supposing its situation to be also one of an appropriation to itself in exclusion of others.

An analogy for this might be found in the case of official uniform paraded by a wearer not entitled thereto, (see also Rev. Stat., sec. 5448,) and calculated to overawe persons who in its absence might have opposed his wrongdoing;—and so the mere *vouching*, as it were, of a charter, seems to have given a graver color to an offense,—perhaps as being thereby in contempt of prerogative.

It seems pertinent to notice this at the present point, although we shall submit hereinafter that Coke's definition has no *restrictive* application within the United States, of any sort—whether upon authority, analogy, principle, or otherwise howsoever. We say *restrictive*, for cases have occurred in which it was *sufficient*, and accordingly was quoted: ex gr., The Slaughter House Cases, 16 Wall., 36; Charles River Bridge Case, 11 Pet., 420.

2. The point, that under the Constitution a court of equity cannot be authorized by statute to exercise jurisdiction in a case so far concerning crime as the present, has been recently considered and overruled. Mugler *v.* Kansas, 123

U. S. 623, 672. And restraints, and monopolies of commerce are offenses of like sort with nuisances thereto. *Obstructions* of "public rivers," "public harbors," and "public roads," for instance, affect commerce in respect of its *instrumentalities*, very much as,—under the policy of the statute of 1890, monopoly must do in respect of *subject-matters*. Pennsylvania vs. Wheeling Bridge Co., 13 How., 518; 2d Dan. Ch. Pr. (ed. 1846) p. 1858. And it is to be added that the authorities cited by the learned counsel in this connection deny the jurisdiction of equity only *in the absence of an authorizing statute*, which, of course, is not our case.

3. Any situation which would justify an application under sec. 4 of the Act of 1890, to prevent commission of the crimes specified under sections 1 and 2,—would justify this all the same although that situation were one which of itself might not in general be within Federal cognizance.

For instance, the United States under certain circumstances had right to object that the British armed vessel 'Little Belt' was "hovering on our coast", although it was then cruising many miles from the shore. 1 Kent, *31: and even foreign vessels "hovering on the coast", outside of our ordinary jurisdictional limits, with intent to sell persons of color then on board into slavery *anywheres*, were, and are, to be forfeited to the United States: R. S. sec. 5555. So if tobacco *manufacturers* are liable to tax, tobacco *planters* must render accounts of their sales to anybody, under penalty of $500. Sec. 3361. And public policy as to the currency, &c. will authorize an incidental tax upon State banks; sec. 3412. Felonies against a State may be punished in Federal Courts when committed whilst violating a Federal statute; sec. 5509. Debtors to the United States are not entitled to trial by jury of any defense which they may have, in case the United States make avail of such debts incidentally to a suit against themselves in the Court of Claims. McElrath's Case, 102 U. S. 426. And the statute which punishes by general words the showing of false lights is not limited to such as shine from a locality within Federal jurisdiction, but may include lights stationed many miles inland; Coombs' Case, 12 Pet. 72, 80.

Such are a few of many illustrations to be given of the principle that to *hover* over a particular sovereign jurisdiction, is practically to subject one's self to it.

In Bowman vs. Chicago R. R. Co., 125 U. S., 465, 498, a suggestion that in order to *prevent* the statutory crime of dealing in spirituous liquors within its borders the State of Iowa *might forbid their interstate transit thither*, was met by referring to the supremacy of *national* policy, over contradictory *State* police. So Husen's Case, 95 U. S., 465. The present proceeding is vice versa: for the policing here in question is *national*, and the principles appealed to in its support are those of ordinary preventive justice,—justice, therefore, in its most beneficent operation. 4 Bl., *451; 135 U. S., 1. Consequently, if the case fail at this point it must fail not for want of a Federal element,—but, *upon the merits*: i. e., because it makes out no reasonable ground for apprehension of a monopoly of interstate commerce in domestic refined sugar.

We argue this matter somewhat closely to the outlines of the case,—one of preventive justice. But the true principle goes much further. For there is no secret place, territorial or of public function, within the United States possessing privileges which can impair the free discharge of national duties to the people at large. Certain governmental functions in this complex society are not liable to be called in aid of that operation, but on the other hand these cannot obstruct or impair it, either directly or indirectly. Reading Chief Justice Marshall's judgment that commerce among the States must be exercised when necessary within the territorial jurisdiction of the several States, (Gibbons v. Ogden, 9 Wheat. 1, 196) in connection with Chief Justice Taney's judgment that *the sphere of action* of the States is as much distinguished from that of the United States as if traced by visible landmarks and monuments, (Ableman v. Booth, 21 How. 506, 516) it may be said that, although instances of this will probably be exceptional, still as matter of mere power, a State *sphere of action* is no more exclusive of national action called for by exigencies in such commerce than its *territory:* or, to apply the words of another great lawyer more recently lost to this BENCH:—it is incontrovertible that the government of the United States may execute its own powers and functions in every part of American soil, without let or impediment from jurisdictions proper to any other public authority whatever. Siebold's Case, 100 U. S., 371, 395.

In the course of such discussions as the present it may be wholesome to recall the fact that the United States in regard to its own operations is as much entitled to *elbow room* as any other government amongst men.

4. Liability to national police,—as has often been decided in regard to other articles in like case, would not prevent sugar from being likewise subject to police and taxation *by any State within whose limits it might have situs.*

5. Neither the current of discussion in the notable case, In re Green, 52 Fed. Rep., 104, so often cited in Circuit Courts, nor the principles laid down in the large class of cases of which "Coe vs. Erroll, 116 U. S., 517, and Kidd vs. Pearson, 128 U. S., 1," are recent instances, have any special application here. The two last of these cases deal only with the question of the *power of a State* over things not at the time in actual interstate transit; whilst the first proceeds upon a very special state of facts which do not concern *preventive* justice, and are otherwise out of this case.

The power of Congress to police or regulate "commerce amongst the States" by placing monopolies thereof, &c.,

under the ban of Federal law, has not been questioned directly, if at all, on behalf of the present defendants. And, at least since Rapier's Case, 142 U. S., 110, it could hardly be.

6. The existence of the statute of 1890 prevents all question here whether "Monopolies" violate as well *the general welfare* of the United States, as *its peace*. Public policy thereabouts in other countries whose legislation differs from ours (Mogul S. S. Co. vs. McGregor, Q. B. D. L. R.: 21 Q. B. D., 544; 23 do. 598; Appeal Cases, "1892," p.) is of no practical concern here. For all the purposes of American courts the statute of 1890 is *absolute* as to that. In Attorney General vs. Cockermouth, L. R. 18 Eq. 172, 178, an information had been filed by the Attorney General to enforce an Act of Parliament concerning nuisances to rivers. And thereupon Jessel, M. R., in giving judgment said: "It is not necessary for the Attorney General to show any injury at all. The legislature is of opinion that certain acts will produce injury, and that is enough. The case I have referred to, (Attorney General vs. Oxford R'y Co., 2 W. R. 330,) is in point. There the Attorney General would not even answer the affidavits of the defendants to show that no injury was caused by the proceedings they were adopting."

We proceed now to the details of the record.

PLEADINGS.

After alleging in general that the defendants are liable to proceedings under Sections 1, 2, and 4 of the statute of July 2, 1890, the bill states substantially as follows:

The defendant *the American Sugar Refining Company*, is a corporation of the State of New Jersey, formed January 9, 1891, under a general statute, with a capital of $50,000,000, for the purpose of buying, manufacturing, refining and selling sugar, &c., within that State and various others; (Record, folio 5,) and the defendants,—*E. C. Knight*, *Franklin*, and *Spreckels Sugar Refining Companies*, and the *Delaware Sugar House*, are Pennsylvania corporations, created for the purpose of importing, manufacturing, refining and dealing in sugar, &c. Of the other defendants, Searles is secretary and treasurer of the American Sugar Refining Company, and the others are stockholders of one or other of the Pennsylvania companies aforesaid.

Until about the 4th of March 1892, the four Pennsylvania corporations aforesaid were engaged, independently, in making and selling refined sugar,—their united product amounting to about 33 per cent. of all sugar refined within the United States; they being also competitors of the American Sugar Refining Company and of each other in that business, and in interstate and foreign commerce therein.

Prior to the 4th of March 1892 the American Sugar Refining Company, by contract &c. had obtained control of all the sugar refineries in the United States except of the four Pennsylvania companies and of *the Revere* of Boston,—which latter company produced about 2 per cent. of the total production in the United States. And thereupon the American S. R. Co. and the defendant Searles conspired to purchase such outstanding properties in order that the last-named company might control the production and price of refined sugar, and thus restrain interstate trade therein.

Thereupon, about the 4th of March 1892, (folios, 8 &c.) the said American S. R. Co., acting through Searles as agent, purchased the whole capital stock of the four Pennsylvania companies aforesaid from their respective stockholders, the other defendants.

The American S. R. Co. (folio 11) now monopolizes the manufacture and sale of refined sugar in the United States, and has limited its production and price; and all the defendants have combined together to restrain interstate and foreign commerce in refined sugar, and to enable the American S. R. Co. to monopolize such commerce.

The prayer (folio 12) is for *rescission* of the contracts aforesaid, *injunction* against farther violation of the statute, and for other relief.

The Answer of the American S. R. Co., (folio 24) (*which is substantially repeated by that of Searles,* folio 15—alleges (Par. 1,) that it is empowered under an act of New Jersey approved April 7, 1875, entitled "An Act Concerning Corporations," and by supplements thereto, to do business and hold property both within and without that State, and to purchase mines, manufactories and other property, or the stock of other companies owning property necessary for their business; that the four Pennsylvania companies in question (Par. 2) did own such property; and that about March 1892, under authority conferred by the State laws aforesaid, and by transactions which were wholly separate from each other, (Par. 3) it purchased the capital stock of each of these. It admits (Par. 5) that on or before March 4, 1892, it owned sugar refineries in New Jersey, New York, Massachusetts, Missouri, Louisiana and California, and the capital stock of one in Maryland; but denies that it then owned or controlled all of the refineries within the United States except those of the Revere and the four Pennsylvania companies in question. It also denies (Par. 4) violation of the statute of July 2, 1890,—or (Par. 5) that it has attempted or intended to, or in fact could obtain complete control or monopoly of the manufacture and sale of refined sugar in the United States. It alleges (Par. 6) that the purpose of its purchase of the stock of the four Pennsylvania refineries was to reduce expenses and increase the production of refined sugar, and obtain a fair price for what it should sell. It also denies that it restrains interstate or foreign trade in sugar, and alleges that "*its object and purpose is to keep the price of sugar lower than that at which any other individual or corporation can refine it, a fair profit being allowed.*"

The other defendants, after admitting respectively exchanges of all the stock of the other defendant Companies, with the American R. S. Co. in the month of March 1892, for stock in the latter, deny participation in the *restraint* or *monopoly,* &c., charged in the bill.

To the answers a general replication was filed (folio 131).

EVIDENCE.

[For convenience the defendant companies will be designated herein as the *American*, *Franklin*, *Spreckels*, *Knight*, and *Delaware*.]

I. In general, it is shown that about March 1892 the defendant corporations were engaged in interstate commerce in refined sugar. Bill, paragraph 8; Answer of American Co. parag's V & VI; also, of Searles, *ibid;* and folios 158, 201, 206, 231.

II. From its organization, January 10th 1891 (folio, 256) until March 1892, the capital stock of the American Co. was $50,000,000 (one-half thereof *common*, and the other *preferred*). At the latter date this was increased to $73,560,000, (one-half *common*, and one-half *preferred*),—for the purpose of purchasing the stock of the four Pennsylvania companies, and a controlling interest in the stock of another, at Baltimore. folios 210, 301, 302.

III. During the 11½ months ending January 1, 1892, the net earnings of the American company were " not less than $5,073,002.17. Out of this two semi-annual dividends were paid, each being of 4 per cent. on common stock, and 3½ per cent. on preferred,—leaving a surplus of net earnings of $1,323,002.17." folio, 300.

During the eleven months of the year ending December 31, 1892, the net earnings of the same company were $8,615,637.52—out of which were paid semi-annual dividends of 4 per cent. on the common stock, and 3½ per cent. on the preferred ; also a quarterly dividend of 2½ per cent. on common stock,—leaving a surplus of net earnings for the two years, of $4,938,537.52. (302)

IV. By referring to a list of prices for granulated sugar in Philadelphia from April 1, 1891 to January 15th, 1893, inclusive, (255) and making the necessary calculations, it appears that from April 1, 1891 to *March 15 1892* (i. e. about the date of the purchase in question), the average price was 4.26 cents per pound ; and from March 15, 1892 to Feb'y 1st 1893, 4.70 cents. Supposing the annual production of such sugar by the American Company to have been, before as well as after March 1892, *three billions of pounds*, (about 1,330,000 tons,)—[which is less than is claimed by the witness Searles for the period after March 1892,] the above *rise* in price for the latter period, when compared with that immediately before, signified of itself a gain in annual income of about $12,900,000. But, as in point of fact the output of sugar by that company after such purchase was much larger than before, the above-stated rise in price was proportionately more advantageous.

Also, as to other periods contained in that list of prices, the following results appear:—

(1), By comparing prices for the period *April 1, 1891 to October 1, 1891* with that from *October 1, 1891 to April 1, 1892* there appears to have been during the latter an average *falling off* in price of .1749 of a cent per pound:

(2), So, as between the period *October 1, 1891 to April 1, 1892*, and that of *April 1, 1892 to Oct. 1, 1892*, there was a *rise* in price, of .3563 of a cent:

(3), Betwixt the latter half of the year of 1891 and the latter half of the year 1892, the increase of price was .693 of a cent;—which represented an increase in annual income, under the above hypothesis, of about $21,000,000.

[We notice these fluctuations because they are in the record, and are matters of some interest. They may not be of any special value in the present case. The element in monopoly under the statute of 1890 which, as we submit, is of most importance is that of *power to control*, even although this be not seen to be actually exerted; or even although what is so seen be a '*benevolent* despotism.' Morris Co. *v.* Barclay Co. 68, Pa. St., 173: 8 Am. Rep. 159, 162, bottom. That statute wisely assumes that under a popular form of government such congestions of *power* are *per se* against good order, and will be abused in some way or other, which the Government when prosecuting them need not be careful to define or detect. In any case a newly formed monopoly would hardly choose to make itself *suddenly* odious: and indeed might not really be *repente turpissimum*, except in principle.

If instead of a corporation with a capital of $75,000,000 engrossing the sugar trade, as now, the lapse of thirty years more shall show to this nation one, say, of $250,000,000, engrossing the several trades in *grain*, *meats*, *fuel*, *oil*, and *sugar*, and even furnishing these articles to the public at much less price than otherwise they could be had—or even gratuitously,—*this enlarged scene and higher strain of benevolence* would hardly be a step in that direction out of proportion to the one taken in the thirty years which ended with 1890; or besides be evidence that no public evil of gravest consequence underlies that situation. An addition of *gratuitous theatres* to the above list might quicken one's historical impression, and recall the Roman cry of *Panem et circences!* with the attendant utter and irretrievable popular corruption and subjection which this evinced, and to which the steps leading to such cry had conduced. Still, this addition is not necessary to show that the above "object and purpose" no more does away with the offense created by the anticipated *condition of things* to which those lower prices were to be an incident, than, in another point of view,—a denial of any *possibility* of monopolizing the sugar trade within the United States or of *possible* stability for any existing engrossment thereof, countervails the effect in law of admissions and proof of the details just referred to, viz., *preceding purpose*, and *existing control*. Such denial amounting, as is submitted, to no more than a plea of *the general issue*, or a contention that in point of law the details in question do not constitute monopoly within the meaning of the statute.]

V. The capital of the Franklin Company was $5,000,000, and its daily product, betwixt 5500 and 6000 barrels of refined sugar, of 330 pounds each. (208) The capital of the Spreckels was also $5,000,000, and its product rather more than that of the Franklin. (278) That of the Knight was $1,000,000, and its product over 1200 barrels (277); whilst the capital of the Delaware was $210,000, (234) and its product, though not given, is stated as comparatively small. The $1,000,000, or more, paid in 1892 for the control of a Baltimore company, represented two-thirds of its capital stock ; and its daily product was about 1500 barrels. (280)

The price (in its own stock) paid by the American Company for the stock of the Franklin, and Spreckels companies was, two for one: and slightly more for that of the Knight and Delaware companies ; Ev. (177 & 244)

The most important witnesses upon the record are *Charles C. Harrison*, who at the time of the sale was president of the Franklin ; and *James E. Searles*, then secretary and treasurer of the American Company, (256) and previously like officer of *the Sugar Refineries Company* of New York,—known also as *the Sugar Trust*, and which has been closed under process of law, the American Company becoming its successor. (214)

VI. CHARLES C. HARRISON, testified in part as follows:

In February 1892, the American Company was the principal competitor of the Franklin, and operated, or owned and controlled, all the sugar refineries in Boston, except the Revere (the daily capacity of the latter being rather less than 1000 barrels),—also all the refineries in New York, Brooklyn, Williamsburg, and Jersey City,—the Belcher of St. Louis, the Forest City of Portland, Me., the Louisiana and Planters' of New Orleans, and perhaps a refinery in San Francisco. (206) This state of things left at that time within the United States, independent of the American, only the four Pennsylvania refineries, the Revere, and it may be the one in San Francisco, although probably this last was *not* run independently. (207)

According to Mr. Harrison, therefore the only States in which in February 1892 refined sugar was produced were Maine, Massachusetts, New York, New Jersey, Pennsylvania, Louisiana, Missouri and California (206). Mr. Searles added to these Maryland and Texas. (260)

About December 1891, (209) Mr. Parsons, who afterwards negotiated the purchase for the American Company, spoke to the witness about the sugar business as not being in good condition. [" This savage competition," (233),]. A month later (210) Mr. Parsons suggested that "a governor upon the engine" might be advantageous; but, inasmuch as he also wished to be that governor himself, nothing came of the negotiation at that time. In January 1892 the American Company was authorized to increase its capital stock by $25,000,000. Early in that month Mr. Parsons applied to purchase the stock of the Franklin; and this was effected early in March. (212) Thereupon, Mr. Parsons asked the advice of witness about buying out the Spreckels Company, (212) and the witness recommended it, because otherwise "Spreckels might be a bull in a china shop" in respect of competition, &c.; and (223) Spreckels was unbusinesslike in his ways. Nothing but shares of its own stock were given by the American in payment for the stock of the Franklin. (225)

The American Company does not altogether control the price of sugar in the United States. (225) Europe shares in that control. If the former were to put that price up, all sugar making countries would within twenty-four hours turn to making sugar. (227) The consumption of sugar in the United States is about 125,000 tons per month. The American Company, irrespective of foreign competition, and excepting the season when the Louisiana crop is in market, might raise the price of sugar a point ($\frac{1}{8}$ of one per cent.,) or two. "*I think the temporary power of any organization which holds such a large percentage of the total refining capacity of the United States is temporarily a severe control. That is what I think.*" (231) *Foreign competition would immediately very sensibly demonstrate its ability to control the price. Except for foreign competition the American Company would* *have great control of the market pending the erection of competitive refineries here. Its situation removes it from domestic competition except the production of cane sugar in this country. This was not the case before the purchase of March 1892.* The product of the four Philadelphia companies at that time was approximately from 30, to 33, per cent. of the total output in the United States. (221) The purchases by the American Company about March 1892 left, as the witness thought, the Revere of Boston (capacity, about 900 bbls. per day) the only independent refinery within the United States. (208) [Mr. *Searles* added to the Revere, the Henderson and the Cunningham, capacity of each about 350 bbls. per day, and the Mollenhauer, capacity 2000 bbls. per day. (269).]

7. ANDREWS.

This witness had for thirty years been a wholesale grocer and dealer in sugar in Philadelphia. He testified that at present there is so far as he knows no domestic competition whatever with the American Company. He exhibited written certificates (Exhibit —) given by purchasers of sugar from the American Company to the effect that within a certain period they had not disposed of any sugar at a less price than that fixed by that company:—upon signing which they received a rebate upon the price of their purchases. The effect of the *equality rate* (Exhibit —) is that the price of sugar to retail grocers is controlled on any day of sale by the price fixed by the American. *At present* (252) *the price of sugar is absolutely under the control of the American Sugar Company;* but such control is subject to the effect of foreign trade, and the intervention of new domestic business. The effect of the rebate system is good for the public. If the price of domestic sugars should be put up to anything like an extortionate price, foreign sugars could be brought here in from two to three weeks.

8. Searles.

Gave a list of the refinery properties (some eighteen) transferred by the Sugar Refineries Company of New York to the American Company at its organization in January, 1891: Since that sime it has acquired the four Philadelphia companies and the control of a Baltimore company; and controls two others in California, through the Western Sugar Company—one-half of the stock of which it holds. The witness negotiated the purchase of the stock of the Spreckels, Knight and Delaware companies; and Mr. Parsons that of the Franklin.

The capacity of the American Company is about 40,000 barrels per day.

The total consumption of refined sugars in the United States in 1892 was (307) about 1,650,000 tons, being 95 % of all sugar so consumed (305). The domestic production of refined sugar in the United States for 1892 was about 1,400,000 tons, of which the American Company (280) controlled the production of about 90 per cent.: or, as upon farther consideration (173) the witness said, about 1,350,000 tons.

The Louisiana sugars marketed in 1892 were in amount some 100,000 tons; the *production*, about 175,000 tons. (289)

The refined sugar trade in 1891–2 was at times unsatisfactory,—because of over-production. There was competition betwixt the American, and the Pennsylvania refineries in 1891–'2; scarcely a "brisk" one;—the figures of the American were generally the basis of the market. The business was conducted for a profit. (294)

Refined sugar is sugar produced at first in the form of *raw* sugar, and then remade, purified and brought to a higher standard by a refining process: *semi-refined*, is that which after being produced as *raw* is in the same connection carried farther, brought to a higher degree of manufacture, and made fit for consumption: *raw* sugar is the crude sugar first made from the original juice of the cane. In refining there is first produced a very *white* sugar; and then the grade runs down to *brown*: all of these, however, are *refined*. The *unrefined* sugar consumed in the United States (five per cent. of all) comes from Texas, Louisiana, Florida; the beet factories in Nebraska, Utah, and California, and from Kansas sorghum, (305) &c. Some 70 per cent. of domestic refined sugar is *white*: i. e., *granulated*, or above.

Refined sugar is consumed in all parts of the United States, about in proportion to the population. (307).

The record therefore shows that the defendant the American Company was organized in January 1891, with a capital stock of $50,000,000 and with "the object and purpose" of establishing a beneficent monopoly (folio 19); that accordingly during the first twelve months of its existence it purchased domestic sugar-refineries whose business covered some *sixty per cent.* of the whole of that business within the United States; and that during the first quarter of its second twelve months, having for that purpose increased its capital to about $75,000,000, it employed such increase mainly in purchasing *over thirty per cent.* more of that business. At the close of this second set of purchases it owned and controlled from about *86 per cent.* (according to details given by Mr. Searles) to about *98 per cent.* (as estimated by Mr. C. C. Harrison) of the total sugar refining business within the United States. This position gave it for the time, as is testified by persons kindly disposed to it, and also of special intelligence an "absolute" (folio 252), or "severe" (folio, 227) control of the whole domestic refining sugar business,—a *time*, the length of which would depend upon a certain degree of abuse of that control, and upon the consequent disposition of foreign merchants to intervene: in other words upon the operation of the free will of men actuated thereabouts entirely by their own pecuniary interests.

In passing this point we submit that within the meaning of the statute of 1890 the matters just mentioned make a clear case of Monopoly: of Monopoly deliberately undertaken, and successfully established *at a coup*, as it were, and for all that can be seen also permanently. For permanence in regard to human institutions means only that they may last until some free human will *sees best* to intervene and destroy them.

The present bill was filed at the close of only fifteen months' existence of the American Company—which were also fifteen months of incessant energy and marvellous results:—The swiftly repeated springs or swoops of a famished wild animal, or bird of prey. The continent could not furnish a theatre for a succeeding like period of such exertions. We say this in presence of the statement by Searles that for the period before the latest access of its activity the prices of sugar had generally been fixed *by that company*: its profits consequently being good,—although the witness characteristically declined to involve himself in an admission that they were "satisfactory." (Ev., 294, 300.)

The defendants assert by their answers that the American Sugar Company was warranted in making purchases as above by its charter from the State of New Jersey; and equally, that the other defendant companies and their stockholders were warranted in selling as above, by their charters from the State of Pennsylvania.

Supposing then the annual sales of products of the American Company (in 1892) to amount to three billions of pounds of sugar (which is rather less than the estimate of Mr. Searles), a rate of one-eighth of a cent per pound thereupon would be $3,750,000;—or *five* per cent. So also an average rise during a year of one-half of a cent would increase any dividend by *twenty* per cent. upon such capital.

So far as to the element of *Monopoly*.

The bearing of that monopoly upon *interstate commerce*, depends upon (1), the proper answer to the question whether it does not *threaten* to become a monopoly of such commerce in refined sugar,—the more that the principal defendant is already engaged in that commerce; and (2), as an alternative, whether considering the relation betwixt that article and that commerce, a monopoly of the former is not necessarily one of the latter also, for purposes of police or regulation.

1. All of the defendant corporations had been engaged in that commerce.

2. But, as a special view of this case, it appears that domestic refined sugar is produced (1892) in only *ten* of the States of the Union, viz., Maine, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Louisiana, Texas, Missouri and California, the population of which (1890) was some 24,000,000. It follows that the other, *thirty-four*, States (besides Territories) and a population of some 39,000,000, depended at that time entirely upon interstate commerce for a supply of this necessary.

Inasmuch as refined sugar is consumed throughout the United States in proportion to population, (folio, 307) it follows that some 850,000 tons of the domestic product of that article of necessity must (not "may") during the year

1892 have become an element in interstate commerce. And even upon the violent assumption that *all* the refined sugar which was *imported*, (say, some 200,000 tons, *i. e.*, 1,650,000, less *1,350,000 plus 100,000:* compare folios 305, 173 and 289) went to supply the States which contained no refinery, still some 650,000 tons of domestic refined sugar would also necessarily have gone thither.

The above *figures* are presented only for the purpose of showing that the quantities and necessities involved here are not *de minimis*, but upon the scale of a great nation, and well calculated to interest observers.

In any case therefore a monopoly of that article must be a monopoly of a part of interstate commerce; and this equally whether the monopolist *chooses to sell*, or *refuses*. For "*restraint of trade*" is one of the evils necessarily incident to "monopoly." So that, whether a monopolist of sugar chooses or refuses to make use of that interstate commerce of which *necessarily*, in the absence of wrongful restraint, sugar is an element, he makes himself a monopolist as to that commerce.

The essence of the monopoly now in question is THE POWER TO CONTROL *wilfully obtained by the American Company over a necessary of life to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable.* Whether the despotism thus established be by experience thus far that which is termed *benevolent*, or otherwise, is, as already submitted, a matter of no concern to those who are called upon to execute the statute of July 2, 1890, *which condemns monopoly for itself.*

And equally, any hypothesis that after a little patience upon the part of the people of the United States *foreign* dealers will flock to their deliverance, (Record, pp. 231, 251), is of no avail to modify the wrong, but rather the contrary.

[Indeed a certain disparagement of political independence accompanies the suggestion that the United States cannot treat as monopoly a state of things which is such—*but for the view which merchants abroad may take of the situation:* a conception which contains two (morally) *unconformable* strata of thought,—not unlike the notable one of—"*a despotism tempered by assassination.*"

And besides, any existing, wilful, control of interstate commerce which also is more than merely momentary, has a relation to *crime* in the United States, which cannot be affected by the interposition at the end of a fortnight, &c., of good offices, by gentlemen in *France* or *Germany*,—or indeed within this country unless these latter offices should include *a pardon* by the President.]

We come now to the errors assigned below upon behalf of the Government, which are as follows (p. 219)—

1. The Court erred in dismissing the bill of complaint.

2. The Court erred in not granting to the complainant the relief prayed for in the bill of complaint.

3. The Court erred in holding that the facts in this case do not show a contract, combination or conspiracy to restrain or monopolize trade or commerce among the several States, or with foreign nations.

Inasmuch as these assignments are merely different forms of expressing one contention, viz. that upon the whole matter the plaintiff *was* entitled to that decree which, also upon the whole matter, the Courts below declined to render, we assume that they may be argued as one, referring especially to the last.

nopolize," quoted from Webster the words,—"to engross, to obtain by any means exclusive right of trade to any place or within any country or district, as, to monopolize the trade" (p. 4090). No other definition was suggested (in either House), nor were those given as above controverted. Upon May 1st, after debate a short amendment was adopted in furtherance of the general policy of the bill, which was then passed, nem. con., (p. 4104).

In the end, in accordance with the recommendation of a Committee of Conference, the bill passed in the shape in which it had originally come from the Senate. (P. 6312).

The general scope of the statute of 1890 therefore being one which the discussion showed to be universally approved in both houses of Congress,—at the close of several months of consideration its form was referred successively to the respective Committees on the Judiciary, and having been recast in a professional sense, it was adopted substantially without dissent,—although in one respect not material here the House would have gone farther (p. 4104). From this it appears that the statute of 1890 during its passage was thoroughly considered both as to wording and purpose; and received that sort of treatment by the legislature which seems best calculated to secure an enactment at once sound and clear. In other words, a draught indicating a general line of policy having been laid before the legislature, this together with proposed amendments was scrutinized in the course of an extended debate, at the conclusion of which the whole matter was committed, successively, to the Judiciary Committees of the two houses, with virtual instructions to reduce it into appropriate form.

We submit that the provisions of the statute are accordingly, in general, as plain as they are concise, and that the only probable difficulty incident to their execution is in that vast, complex and, what is more, *rapidly opening* scene of continental commerce upon which it is to operate.

We refer in general in this connection to a thoughtful opinion by Judge Putnam, 55 Fed. Rep., 605, 638; and to the very exhaustive briefs of counsel, therewith reported.

The case of the Trans-Missouri Freight Association, 58 Fed. Rep., 58 also presents instructive views of the Statute of 1890,—*in connexion with the Interstate Commerce Act of 1887 ;*—but its conclusions are not important here.

Of the terms which the statute employs the only one to which we will call particular attention is "monopolize."

That word, as we shall submit, has been somewhat *obscured* by the manner in which a comment in that connection by Lord Coke has subsequently been accepted. But for this (affecting as it does subject-matters of the *law merchant*) it would have a uniform legal meaning, running back in code provisions at the original home of the law merchant and elsewhere for 1400 years at least, that would have rendered its discussion even more unnecessary than that of the other technical expressions associated with it in the statute,—such as "contract," "conspiracy" and "restraint of trade."

Inasmuch as *monopoly* is, as well, *restraint of trade* in the highest development of the latter, and therefore includes it, this brief will be confined substantially to a consideration of section 2. For, if the "control" of the sugar trade originally *intended* by the American Sugar Refining Company (Answers of that Co. and of Searles, art. 6,) and afterwards *brought about* by it, (Evid. of C. Harrison and Andrews; folios 231, 252,) could be thought to fall short of a *monopoly*, it would still be a *restraint of trade*, engineered purposely by the combination, &c. of—at all events, the above named Company and the defendant Searles;—if not, as we submit, of all the defendants. Because, one form of such *restraint* is that in which the public at large comes to suffer by the fact that other dealers have been induced (*even if only by reasons addressed to their sense of private interest,*) to abandon that *competition* which in the long run,—if not "the life of trade," is *to the health of the community*:—the *public suffering* above alluded to being, at the same time, if not *high prices*,—some other social evil, no matter what, (perhaps, merely *a political malaria,*) incident to vast private power exerting itself, within a popular government—of course, selfishly, and also in a concealed series of operations. Such appears to be the evident scope of the statute, and we will consequently confine our contention mainly to the provisions of the second section,—of course in connection with those of the fourth.

Therefore, to resume,—

Inasmuch as the statute is a criminal one, the monopolizing therein mentioned must by necessary implication be an *intended* one. Indeed an element of that sort, as is said by very high authority, appears to be indispensable to "monopoly" under any circumstances. According to Pufendorf,

> "The very name Monopoly causes horror to many people; and the laws of many States forbid under rigorous penalty that which is thereby understood. But there are many cases which do not deserve to be stigmatized by that odious title. For example, if a citizen be the only person—who knows how to make certain articles of merchandise,—or, whose land produces certain fruits, &c., and he avails himself of these advantages, without doubt that would be a very innocent matter and not to be treated as monopoly. For the idea of "*Monopoly*" supposes that he who exercises it *has of himself procured* [our italics] the privilege of solely selling articles of merchandize, which others had as much liberty to traffic in as he."
>
> Law of Nat., Bk. 5, ch. 5, sec. 7.

It is true that as yet the defendants have not laid stress upon the pretence that in order to make out a case of "monopolizing" under the statute it is necessary, by analogy to Coke's definition, that the persons charged should have received countenance in what they have done by some governmental (quasi-sovereign) action. Nevertheless, as the matter is now before a COURT of highest resort, it may be prudent to consider that definition, and as already intimated to submit, not only that as is patent it has no *restrictive* application to the statute *in terms*, but also that it can have none by analogy; and also, reasons for believing that so much of the general passage in the Institutes containing that definition as is here relevant, is, *not* Coke's definition of the English "institution" *Monopoly*, but his other definition of the same "*word*," which latter definition leaves *the means* by which the monopoly may have been brought about, a matter of indifference; as it does also, *the end* to which this shall have afterwards been applied.

One view of "monopoly" which may perhaps be regarded as differing from that which is important here, has been recently stated with authority, clearness and force in an opinion rendered in the case, In re Greene, 52 Fed. Rep. 104. That opinion has been often cited with favor in subsequent cases upon the circuit,—ex. gr., in the present case. The soundness either of the decision therein or of the general course of the opinion is not to be questioned. Some observations made in the latter have, however, been caught at as if irreconcilable with one,—and the most important,—theory upon which the present case rests. In view of this we ask that they may be considered here, so that any possible practical misconstruction of them may be avoided, and, at all events, an indisputable rule laid down. Such consideration may at the same time show that as above suggested, the notable part of Coke's definition is *wholly inapplicable* within the United States *quâ* "definition."

In re Greene, was a case of Habeas Corpus to release a person (a stockholder in a company which then manufactured, and controlled the sale of, 75% of all distillery products within the United States,) *held* in Ohio under a United States warrant, for the purpose of being removed to the District of Massachusetts, in order to answer an indictment for the attempt to monopolize, &c., under the statute of 1890. Thereupon, for several reasons not to be questioned, but not important here, the Court held that the indictment was void upon its face.

In the course of its argument, however, the court made the following remarks:—

"It is not very clear what Congress meant by the second section of the act of July 2, 1890, in declaring it a misdemeanor to 'monopolize,' or 'attempt to monopolize,' any part of the trade or commerce among the States or with foreign nations. It is very certain that Congress could not, and did not, by this enactment, attempt to prescribe limits to the acquisition, either by the private citizen or State corporation, of property which might become the subject of interstate commerce, or declare that, when the accumulation or control of property by legitimate means and lawful methods reached such magnitude or proportions as enabled the owner or owners to control the traffic therein, or any part thereof, among the States, a criminal offense was committed by such owner or owners. All persons, individually or in corporate organizations, carrying on business avocations and enterprises involving the purchase, sale, or exchange of articles, or the production and manufacture of commodities, which form the subjects of commerce, will, in a popular sense, monopolize both State and interstate traffic in such articles or commodities just in proportion as the owner's business is increased, enlarged, and developed. But the magnitude of a party's business, production, or manufacture, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of such business, production, or manufacture, is not the monopoly, or attempt to monopolize, which the statute condemns.

"A 'monopoly,' in the prohibited sense, involves the element of an exclusive privilege or grant which restrained others from the exercise of a right or liberty which they had before the monopoly was secured. In commercial law, it is the abuse of free commerce, by which one or more individuals have procured the advantage of selling alone or exclusively all of a particular kind of merchandise or commodity to the detriment of the public. As defined by Blackstone, (4 Bl. Comm. 159,) and by Lord Coke, (3 Co. Inst. 181), it is a grant from the sovereign power of the state by commission, letters patent, or otherwise, to any person or corporation, by which the exclusive right of buying, selling, making, working, or using anything is given. When this section of the act was under consideration in the senate, distinguished members of its judiciary committee and lawyers of great ability explained what they understood the term 'monopoly' to mean; one of them saying: 'It is the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him.' Another senator defined the term in the language of Webster's Dictionary: 'To engross or obtain, by any means, the exclusive right of, especially the right of trading, to any place or with any country, or district; as to monopolize the India or Levant trade.' It will be noticed that, in all the foregoing definitions of 'monopoly,' there is embraced two leading elements, viz., an exclusive right or privilege, on the one side, and a restriction or restraint on the other, which will operate to prevent the exercise of a right or liberty open to the public before the monopoly was secured. This being, as we think, the general meaning of the term, as employed in the second section of the statute, an 'attempt to monopolize' any part of the trade or commerce among the States must be an attempt to secure or acquire an exclusive right in such trade or commerce by means which prevent or restrain others from engaging therein. It was certainly not a 'monopoly,' in the legal sense of the term, for the accused or the Distilling & Cattle Feeding Company to own 70 distilleries, and the products thereof, whether such products amounted to the whole or a large part of what was produced in the country. Their ownership and control of such products, as subjects of trade and commerce, is not what the statute condemns, but the monopoly or attempt to monopolize the interstate trade or commerce therein. In this acquisition and operation of the 70 distilleries, which enabled the accused or said Distilling & Cattle Feeding Company to manufacture and control the sale of 75 per cent. of the distillery products of the country, it does not appear, nor is it alleged, that the persons from whom said distilleries were acquired were placed under any restraint, by contract or otherwise, which prevented them from continuing or re-engaging in such business. All other persons who chose to engage therein were at liberty to do so. The effort to control the production and manufacture of distillery products, by the enlargement and extension of business, was not an attempt to monopolize trade and commerce in such products within the meaning of the statute, and may therefore be left out of further consideration." pp. 115, 116.

These general remarks are to be restrained of course to their subject-matter—the indictment then before the court. As this is not reported except cursorily, it may be assumed that as so qualified no fault can be found with them. As general propositions, however, we may be allowed to raise, with deference, the question whether they may not go too far in narrowing the signification of the word *monopolize* in the statute of 1890: ex. gr., in the suggestion that since the 2d of July, 1890, there can be "*legitimate* means and *lawful* methods" by which within the United States a person can of purpose acquire property to such an extent as "to control the traffic therein among the States;" and, that, "the magnitude of a party's business, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of said business, is not the monopoly, or attempt to monopolize, which the statute condemns."

It seems that the view taken in these passages is due to some influence of the *principle*, (in contradistinction to the mere *wording*,) of Coke's definition:—*to the effect*, that is, that some enabling force *exterior* to that issuing out of the *fact* charged as being a monopoly, is necessary in order to constitute it such within the meaning of the statute. Whilst the view for which we contend is, that if such *fact* be shown to be actuated by a power—in regard to some one or more articles of commerce,—of controlling the market therein, it is not material to ascertain, or therefore to inquire, how or whence this power arises :—so that it be not from purely sovereign action, such as some competent charter, patent for an invention, &c.

We have quoted the above passage, therefore, not only as interesting, but also as indicating that we cannot safely neglect the passage in 3d Institutes (context and all,) which first presented that definition to the profession. For it seems that under such definition the contention for the Government in this record stands upon the very narrow ledge afforded by Davenant's case, as above stated. That *ledge* may be sufficient,—but it is too much of *an oddity* to be relished as an ingredient of business in the 19th century. The only recommendation of it to us here is that it serves to display as well the oddity of the definition with which we are now met.

We quote from the commencement of chapter 85 of the Third Institute ("*Against Monopolists, Propounders, and Projectors*"): being a commentary upon the statute 21 James I, ch. 3.

" It appeareth by the preamble of this act (as a judgment in Parliament) that all grants of monopolies are against the ancient and fundamental laws of this Kingdom. And therefore it is necessary to define what a monopoly is.

"A monopoly is an institution, or allowance by the king by his grant, commission, or otherwise to any person or persons, bodies politique, or corporate, of or for the sole buying, selling, making, working, or using of anything, whereby any person or persons, bodies politique, or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindred in their lawfull trade.

"For the word monopoly, *dicitur* apo tou monou, (i. solo.) kai polcomai, (i. *vendere*) *quod est cum unus solus aliquod genus mercaturae universum vendit ut solus vendat, pretium ad suum libitum statuens.* Hereof you may read somewhat at large in that case," [cited in the margin as "Trin. 44 Eliz. Lib. 11, f. 84, 85; *le case de monopolies.*"] 3. Inst., 181.

We submit that it is remarkable that although Coke makes "*monopoly*" as contained in the statutory phrase "*grants of monopolies,*" the subject of his definition, he should immediately thereafter define the former as including the latter! *Grants &c. of monopolies,* under the wording of the statute of James are certainly different things from *monopolies* themselves. The influence of Coke's great name is strikingly shown in the circumstances that this definition, (which, with the rest of 3d Institutes, *wanted his last hand,*) should have cast its shadow over the common law ever since.

However, so far as we have found, no case is reported anywhere in which the above definition has been applied by a court *to defeat* a suit in which the sole selling complained of arose *otherwise* than under a king's grant, or some similar governmental allowance.

And equally, no case in which that particular question arose. The definition has therefore been unchecked and unquestioned by that invaluable professional criticism which, *in the course of actual business done by trained intellects at the bar and upon the bench*, has moulded other legal terms into the signification which they have at the present day. And besides, under the influence of a very great repute it has in the meanwhile run *by rote* as it were, a course through various elementary books of high character. It is also to be observed at the same time that the definition is one sufficient for the facts of those reported cases in which it has been cited: ex. gr, The East India Co. v. Sandys, 10 State Trials, 371; Skinner, 91, 100, &c.,—and within the United States, the Slaughter-House cases,—16 Wall. 36 (see also 111 U. S., 746,) in which the monopoly arose *under a State grant supposed to contradict privileges guaranteed by the Constitution of the United States,*—a situation analogous of course to that of *a King's grant, in opposition to the Law of the land, in England.* A perusal of the chapter in Institutes above cited, under the light of its historical connection, shows that, as was natural and indeed scarcely to be avoided, Coke's attention was then greatly attracted to one sort of monopoly;—*that* against which he had shortly before ended many years of absorbing and very creditable contention both as lawyer and legislator:—victory in which was sealed by that statute upon which he was commenting.

The 21st of James I, ch. 3, (which, so far as material here, may be found in the Appendix,) declares that not only *grants of monopolies*, but that *monopolies* themselves are contrary to law.

We submit, therefore, that although it was intended mainly as a declaration against those royal grants, &c., of monopolies in regard to which public attention in England was then greatly excited,—(being one item in the general claim by the Crown of a power *to legislate* by itself upon various matters,)—yet the framers of that statute considerately went farther and condemned all things to which the word monopoly as distinguished from Coke's "institution" could apply,—i. e., to all cases in which "one person sells alone the whole of any sort of marketable thing in such way that only he can continue to sell it, fixing the price at pleasure."

We also submit that, whilst *the chapter* which contains that definition savors strongly of the preceding contest with the Crown, yet that by reading in connection with that chapter the statute, *as a proper context thereof*, it will appear that Coke may not have intended *to confine* the legal meaning of "Monopoly" to certain privileges created by royal or quasi-sovereign grants, allowances, &c.

"Monopoly" is a word which appears not to have been introduced into English law until the reign of Elizabeth, (43 Eliz. ch. 1, sec. 9) and then from the Civil Law, and probably in great measure by Coke himself. Moore, 576; 11 Co. 84; 3 Inst.

Neither Magna Charta nor any of the statutes cited by Coke in that connection from the reigns of "Edward 3," &c., &c., (and see also those cited, 2 Inst. 63,) as showing that "monopoly" was in those reigns against the fundamental laws of the realm, employ that word or any derivative therefrom.

Nor, so far as our powers of examination enable us to say, is it to be found in the *Abridgment* of Fitzherbert or in that of Brooke,—published some twenty-five years before, about 1575; see titles *Grant*, *Prerogative*, &c. Whilst, upon the other hand, it is be found in that of Rolle, collected after Coke's death.

Again, the manner in which the word is introduced in the above-cited statute 43 Eliz. ch. 1, (A. D. 1601): "*An Act for confirmation of Grants made to the Queen's Majesty, &c., and of Letters Patent made by her Highness to others,*"—(enacted betwixt the date of the case of *Davenant*, and that of *Darcy*, and probably the earliest statute in which it is contained) suggests that at that time it was not a *word of art:* ex. gr., Sec. IX, "Provided always that this act, nor anything therein contained, shall extend or be taken to make good * * * any letters patent, or any grant in them or any of them, containing or concerning licenses, powers or privileges commonly called *Monopolies*." In old pleadings and statutes the phrase "commonly called," as is well known, is used to signify that the name thereby denoted is not a technical name,—and this either because it may as matter of law belong to another person, or because an article so designated has only recently come into use: For instance,—in statutes:

"Vagabonds, commonly called Egyptians."—5 Eliz. ch. 20, sec. 2.

"Evil disposed persons, commonly called cut-purses or pick-purses; but indeed, by the laws of the land, very felons and thieves."—8 Eliz. ch. 4, s. 2.

"White cloth, commonly called long worsteds;" also, "Long colored cloth, commonly called plunkets, azures, and blues."—4 Jas. I, chs. 1, and 2.

"A statute commonly called Statutum de Tallagio non Concedendo."—3 Chas. I, s. 1.

"A court, commonly called Star Chamber."—16 Ch. I, ch. 10, Title, and secs. 2 and 3.

And, in Pleading:—

"George Gordon, Esquire, commonly called Lord George Gordon."—2 Chitty, Cr. L. 83: see *ib.*, 189, and 382.

"The great Court of Pleas there, commonly called Westminster Hall."—*Ib.*, 455.

To the same general effect it is that in arguing the case of Sandys, (10 State Trials, 371, 381—, A. D. 1684,) Mr. *Holt* said: "Between the 43d of the Queen and the 20th year of King James, is about twenty-three years. In the 43d of the queen the discourse of Monopolies *first began* in parliament; and they were considering, it may be supposed, all this time how to settle the matter of monopolies, and to declare what were monopolies."

The early English Common Law was, as is well known, deficient originally both as to ideas and terms connected with extended commerce. Such of these as from time to time came to be needed in its business were freely borrowed from the Civil Law. And so Coke and his contemporaries borrowed thence that term with which, under Elizabeth and

James, they fired the English heart, and kept the Commons steady to a great purpose during a thirty years' political campaign.

Nor was "Monopoly" any more a term of the early Roman law; and this for reasons like those which operated in England. Republican Rome was not commercial.—Taylor, Civ. Law, 501. And even under the Empire, Tiberius in addressing the Senate apologized for using *the foreign word Monopoly,—ib.*, 513, quoting *Suetonius.*

And the circumstance that the "text" of the Civil Law to which Coke refers, (*expressly*, in Darcy's case,) treats (see Appendix) of *two* sorts of monopoly—(one arising under governmental grant, &c., and the other by contract or contrivance betwixt private men),—suggests a reason why the statute of James also in like phrase refers to *two.*

We may add that the fact that Grotius and Pufendorf who were of or near Coke's time, in discussing topics of Natural Law do likewise, is an additional argument as to the views of great jurists in England.

We have placed the "text" in question and also the passages from Grotius and Pufendorf, in the Appendix, so that they may conveniently be seen in juxtaposition with the Statutes of James, and of the 2d of July 1890. It seems indeed that as the author of the statute of James I, (A. D. 1624,) probably had the Imperial Code, (A. D. 480,) before him, so also the authors of the statute of 1890 in turn had that of James:—making out thereby a pedigree from the earliest to the latest of this legislation. All three of these laws denounce one sort of "monopoly" that is not defined therein: in all, penalties are imposed on behalf of the public, and in all a right of suit is given to any private persons damaged,—to be attended under each of the two latter, by a recovery of *treble* damages.

Upon the whole, therefore, we submit that, Coke's definition, (*abstracted* we mean *from its context* in 3 Inst. and the statute of James,—as has generally been done in later elementary books, and *uncarefully* too, because of the little interest which English litigation has had in the topic for the past three centuries),—conveys a defective view of the English Common Law upon "monopoly." In point of fact, it seems that that word is not an English Common Law word. But if the statute of James is to be taken as conclusive with us that it is;—nevertheless, even in this alternative we are equally rid of a conclusion that it does not apply except to privileges created by quasi Sovereign grants &c. The words of the statute, as they are in this respect less narrow than those of Coke, so also they are more authoritative as to what was that Common law. The way in which it is used there indicates that again in the act of 1890 it includes not only privileges of *solus vendere granted* &c. but as well any mere *fact of control* of the market in some particular, purposely obtained—*no matter how*.

Equally, it suggests that under the statute of 1890, it is of no consequence in a case like the present, that one who has brought such *fact* into existence, does not use it *in raising prices;* or indeed for any other selfish purpose *which a court can detect.* For, before a court of justice the status "*monopoly*" is an offense *in itself, by itself, and for itself,* without regard to any farther "*mischief to the State,*" or known "*general inconvenience attending thereupon*"—to borrow phrases from section 5 of the statute of James.

The Reports have been searched with some attention, and with interest, for some *specific* authority upon the topic of *Federal element,*—now under discussion. If there be any such it has escaped us. The numerous Federal cases upon interstate commerce, with rare exceptions, (only *one in* *eight*, out of some 150 that we have noted),—turn upon the power of *the several States* to do this or that. But as to limitations upon the right and duty of the United States to police or regulate interstate commerce, directly or indirectly, very little that is *particularly* material here seems to have been determined. And this, of course, because litigation has not called for it. Probably, as intimated by Mr. Turpie, above, the statute of 1890 is a forerunner of much in various directions that soon hereafter will be necessary to be done in like sort. If Congress shall find it necessary to establish a national office in the interest of public health, by way of police against cholera, yellow fever, or the like, the statute and the action of those who shall be called upon to administer it, will no doubt receive a liberal construction by the Courts. Questions of detail and of the exercise of official discretion within the limits of the general power conferred, will be considered in a favorable light:—as in the Duluth Case, 96 U. S., 379.

Again, the 4th section now before the Court is entitled to the same construction *for interstate commerce* as a similar provision would be in a State statute upon trade and commerce in general. No more narrowness and no more liberality of interpretation is allowable in applying these to their respective topics, in the one case than in the other. The question, ex. gr., what is ground for reasonable apprehension, within the "enumerated" domain of interstate commerce, is to be decided by the same arguments drawn from common sense and human experience as would affect the question, What is such under State legislation as to commerce in general, or any other *unenumerated* item of domain. The minds of tort-feasors do not change with a change of the field of their operations from State to Federal jurisdiction.

The necessarily special provisions of the statute of 1890 do not modify the conviction which its general *reason and spirit* produce upon the reader, viz., that Congress regards monopoly in general within the United States (even when not limited to interstate commerce) as being against public policy. In its definition of it as criminal the legislature went as far as *constitutionally* it could. Any monopolist of marketable things which ordinarily are subject-matters of interstate commerce although not yet involved therein, must, within police administration, be regarded as *prowling* around that commerce itself: in other words, as having come into its vicinity with evil purposes. It is not the case of an appearance in that vicinity of an innocent person. As bare monopolist he is to be suspected. His presence " in his own likeness," to use an impressive phrase in the older books, is a threat to take like possession of any department of commerce that promises profit; and therefore of some part of interstate commerce. Or even of the whole of it if he have a competent syndicate behind him, or be that " person " itself—with a *dilatable* State charter of some half billion dollars capital,—or of a billion or two, more or less. And even a poor seventy-five millions might be a good *starter* for a part,—*a thin edge.*

Nothing further occurs to us to be said upon either of the two questions involved in this case: that of Monopoly, or that of Federal element.

We submit that it is only because these vast aggregations of commercial power have made their appearance upon our horizon first within a few years past, that the public has not the advantage of some Judgment by Marshall, Taney, Chase, or Waite, and their peers, vindicating the power of the United States to suppress them; and rendering such vindication by this time familiar, and generally accepted as being both wholesome and a fresh witness to the adaptive beneficence of the Constitution:—a fit sequel in its day and time to numerous other such interventions at critical moments which, however once lightly questioned and wondered at, are now held to have been as indispensable and welcome as the changes of the seasons, and the coming on of rain, sunshine, or *Frost*. If we have found no specific authority upon the subject, from Gibbons *v.* Ogden down to the very late case of the North River Bridge Company, 153 U. S. 525, we submit that the general trend of the course of this COURT is in the direction of the present contention by the Government. And particularly that a decision that a necessary article of daily food which requires the operations of interstate commerce in order to reach large numbers of consumers who are citizens of the United States, is *not* at all times whilst on the market subject to regulation by Congress, might be to hamper the functions of the latter in a manner to which the rapid development of the country and the specific character of encroachments upon great national interests that are upon our horizon, *or higher*, may, within a few years at least, call attention, as being if not a sort of social paralysis, yet, at all events, one of nervous prostration.

Such a suggestion may be permitted at the Bar *dum fervet opus*,—without impeachment of an accompanying sentiment of profound respect for whatever upon consideration may be otherwise adjudged.

We have already intimated that the defendants fall into two classes as regards the extent of their relation to the monopoly in question. The stress of the case falls, of course, upon the American Sugar Refining Company. And its secretary and active agent Searles, who by answer and otherwise associates himself as privy to its plans and doings in the year 1891–2, (as previously he had been to those of the Sugar Trust of New York,) is also a principal in the wrongdoing. But whilst it may be believed that other defendants are also art and part therein, it is to be admitted that the evidence against them is less direct. It may be left without farther remark to the general effect of the record.

If upon this latter account it shall be considered impracticable to grant all the details of the specific relief prayed for, by the bill, we submit that the Government is at all events entitled to an injunction ordering the American Sugar Refining Company to wind up its present business at some early period; and thereby to cease from its *in terrorem* position towards interstate commerce in refined sugar. The interests of private property therein involved, however important, cannot be compared with those which the community has in the suppression of the *illegal* congestion and sway associated therewith, and so full of threats of great social disorder *concurring therewith, or antagonistic.*

There is no such sanctity and no such *magic* about *a State corporation* as enables it with impunity to commit or threaten crimes against the United States for which *a natural citizen* of the State would be punished. And if the United States have authority in a proper case even to deprive the latter *of life itself*, so also it may the former.

Upon the whole matter we therefore submit, that errors as above assigned exist in the record; and that the Government was entitled to a decree in the courts below.

S. F. Phillips,
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Richard Olney,
Attorney General.
Lawrence Maxwell, Jr.,
Solicitor General.

APPENDIX.

"An act to protect trade and commerce against unlawful restraints and monopolies."

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding, under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. Act of July 2, 1890: 26 Stats. 209.

Statute of 21, James I, Ch. 3: "*An Act concerning Monopolies,*" &c.

"Forasmuch as your most excellent Majesty [&c.] did in the year of our Lord God one thousand six hundred and ten publish in Print to the whole Realm and all posterity, That all Grants and Monopolies, [&c.] are contrary to your Majesty's laws; which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your Realm: (2) And whereas your Majesty was further graciously pleased expressly to command that no Suitor should presume to move your Majesty for matters of that nature; (3) Yet nevertheless upon misinformations and untrue pretenses of public Good many such Grants have been unduly obtained and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's Subjects, contrary to the Laws of this your Realm and contrary to your Majesty's most Royal and blessed intention so published as aforesaid; (4) for avoiding whereof and preventing of the like to come, May it please your excellent Majesty, [&c.] that it may be declared and enacted, (5) and be it declared and enacted [&c.] That all Monopolies, and all Commissions, Grants, Licenses, Charters and Letters-Patents heretofore made or granted, or hereafter to be made or granted, to any person or persons, Bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working or using of anything within this Realm or the Dominion of Wales; (6) or of any other Monopolies or of power, liberty or faculty to dispense with any others, or to give license or toleration to do, use or exercise anything against the tenor or purport of any Law or Statute; [&c.] are altogether contrary to the Laws of this Realm, and so are and shall be truly void and of none effect and in nowise to be put in use or execution.

II. That all Monopolies, and all such Commissions, Grants, Licenses, [&c.] and all other matters and things tending as aforesaid, and the force and validity of them and every of them ought to be and shall be forever hereafter examined, heard, tried and determined by and according to the Common Laws of this Realm and not otherwise.

III. That all person or persons, Bodies politic or corporate whatsoever which now are or hereafter shall be shall stand and be disabled and uncapable to have, use, exercise or put in use any Monopoly or any such Commission, Grants, License, [&c.] as aforesaid, by any liberty, power or faculty grounded or pretended to be grounded upon them or any of them.

IV. That if any person or persons at any time after the end of forty days next after the end of this present Session of Parliament shall be hindred, grieved, disturbed or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken away or detained by occasion of pretense of any Monopoly, or of any such Commission, Grant, License, [&c.] as aforesaid, and will sue to be relieved in or for any of the Premises That in every such case the same person and persons shall and may have his and their remedy for the same at the Common Law by an action to be grounded upon this Statute * * against him or them by whom he shall be so hindred, grieved, [&c.] wherein all and every such person [&c.] shall recover three times so much as the damages which he or they sustain by means or occasion of being so hindred, [&c.]

" II. (I.) *Imp. Zeno, A. Constantino., Pf. P.:* [*circa* A. D. 480.]

We command that no one,—either of his own authority, or under sacred rescript or pragmatic sanction already obtained or hereafter to be obtained, or sacred allowance by our favor,—dare to exercise a monopoly, whether of any sort of clothing fish shell-fish sea-urchins or any article else pertaining to food or any sort of necessary, or of any *material* of any kind; and that no one by illicit agreement conspire, or contract, not to sell any article of trade for less price than that which those thus agreeing shall have mutually established. Also, builders, contractors for building, and persons holding themselves out as mechanics of any other sort, as likewise bathing-house keepers, are wholly forbidden to agree with each other not to carry on work previously committed to another, or not to undertake any charge previously enjoined upon another: All persons being hereby authorized to complete without fear any work begun and left undone by another; and as well also to bring to justice all outrages as aforesaid,—without fear and without judicial expense.

"If any one dare to exercise a monopoly he shall forfeit the whole of his property, and be condemned to perpetual exile.

"Moreover, if hereafter chiefs, [*primates*] of other callings, whether in fixing ~~establishing~~ prices for things or in regard to any unlawful orders by them issued, dare to bind by contract such as give an assent thereto,—we decree that they shall be punished by a fine of forty pounds of gold:—Your own office also to be condemned in fifty pounds of gold in case that upon the creation of any such prohibited monopolies or corporate agreements, the above most wholesome penalties imposed by us shall in any instance, whether from venality or subterfuge or in any other way, fail of being fully exacted." *Corpus Jur. Civ.: Cod. IV, Tit. LIX.* (Beck's ed., vol. 2, p. 157.)

Grotius, *De Jure*, &c., Book 2, ch. 12, sec. 16: (A. D. 1625)

"Not all monopolies offend against the law of nature, for, sometimes the sovereign power may for good reason and a stated consideration allow of such. Of this the history of Joseph when viceroy of Egypt furnishes an illustrious example: So also at Rome, the Alexandrians had what Strabo [contemporary with Tiberius] calls 'a monopoly' of Indian and Ethiopian commerce. Such a one also might be created by private persons, provided it were upon just compensation.

But they who, as the oil merchants at Velabrum, by combination so manage that articles shall be sold above what at the time is their highest market price, or who by violence or fraud hinder the importation of more, or who combine to buy in concert marketable articles in order to sell them for a price which at the time of sale is unjust,—cause an injury at law, and are bound to reparation. But if they hinder the importation of merchandise in any other way, or buy in concert in order to sell for a larger price,—one however at the time not unfair, they act indeed contrary to the rule of Charity, as Ambrose evinces at large in his Third Book of Offices, but properly speaking do not violate the legal rights of other men."

[*As a mote for the mind's eye*—it may be observed that *Sir Francis Moore*, in the course of his argument for the defendant in Davenant's case, also quotes from St. Ambrose. We note this as additional evidence that upon the matter of *Monopoly* English Common-law lawyers and Continental Civil-law lawyers consulted the same authorities. We may repeat here that in America it is Coke's "*word*," and not his "*institution*," that is important. ~~The Revolution rid us of all British institutions.~~ As to the latter, the language of the 3rd Institute indicates plainly that he felt as if still addressing a *puritanical* and *pedantic* [however wise and resolute] House of Commons. But the "word" and its meaning were the same that had then been used for 1,600 years during discussions about public affairs in various civilized countries. Both the "word" and "institution" are mentioned in the *declaratory* statute of James, which was for American colonists a statement of English common law more authoritative than the words of Coke, especially when the latter are *abstracted*, as we have said, from their context upon the page where originally written.]

Pufendorf, *Law of Nature*, Book 4, ch 5, sec. 7. (A. D. 1672)

* * " In regard to monopolies as between citizens of the same country, it is to be remarked that it is not unlawful to forbid a person by public autnority to traffick *generally*, without having acquired the right so to do by law. So in most of the States of Europe it is not enough to know how to manufacture certain articles of commerce or trade, but one must also have obtained the degree of *Master* thereabouts [*la Maitrise*,"] or the power of exercising these which is conferred under certain conditions. The Sovereign also can grant to a particular citizen or to a company of merchants the privilege of sole transportation of a particular sort of merchandize, from certain places [&c]. As to private persons considered as such,—these cannot of their own authority innocently exercise a monopoly properly so-called. For how can a private person who has no authority over others, nor any coercive power, hinder these directly and at will, from trafficking in any particular sort of merchandise. Monopoly by private persons then is founded upon no right or privilege, but is brought about only by concealed tricks and criminal conspiracies, as for instance when certain merchants use artifice to hinder a fellow-citizen from going to places from whence they transport certain merchandise,—or foreigners from coming in person to sell such things in the country; or when, having special information they buy up all the marketable articles of one sort that they can find, and lay them up for a time in their warehouses, in order that becoming rare they may resell them at an exorbitant price: &c.

156-1

Office Supreme Court U. S.
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JAMES H. McKENNEY,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. ~~765~~. 645

156-1

THE UNITED STATES, APPELLANT,

vs.

E. C. KNIGHT COMPANY AND OTHERS.

Addition to the Brief for the United States.

We append to the brief on behalf of the Government the following notes of certain cases heretofore omitted:

In the case of People *vs.* Chicago Gas Trust Company, 130 Ill., 268 (A. D. 1889; 17 Am. St. Rep., 319, the defendant had been incorporated under a general statute in order, amongst other things, "to purchase and hold or sell the capital stock" of any gas company in Chicago or elsewhere in Illinois. The action was in *quo warranto.* It is referred to here for the purpose of quoting language of the court pertinent in certain respects to the present case, *ex. gr.*—

"There were (Am. St. Rep., 331) four gas companies in the city of Chicago. * * * All of them laid their pipes and mains, and were engaged in making gas and in furnishing it to the inhabitants. They were the only companies so engaged. * * * The Chicago Gas Trust Company has purchased and now holds a majority of all the shares of stock of these four companies. * * *

"What results must necessarily follow from such ownership? One is that the trust company can control the other four. The question is not whether it has attempted to exercise such control. The law looks to the general tendency of the power conferred. * * * The control of the four companies by the appellee (an outside and independent corporation) suppresses competition (p. 332) between them and destroys their diversity of interest and all motive for competition. There is thus built up a virtual monopoly in the manufacture and sale of gas.

"The fact that the trust company almost immediately after its organization bought up a majority of the shares of the stock of each of these companies shows that it was not making a mere investment of surplus funds, but that it designed and intended to bring the four companies under its control and by crushing out competition to monopolize the gas business in Chicago. * * *

"If contracts and grants (p. 334) whose tendency is to create monopolies are void at common law, then, where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void."

Upon the point of monopoly we submit that the action of the American Sugar Company in relation to the four Philadelphia companies is quite within the scope of the above censure. The details of the two cases are very much the same, and where these differ the difference is immaterial for any purpose important here.

We also quote from that opinion its concluding paragraph, as follows:

"We concur in the following views expressed by the supreme court of Georgia in the case of *Central R. R. Co. vs. Collins*, 40 Ga., 582: 'All experience has shown that large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. Having perpetual succession, any kind of corporation has peculiar facilities for such accumulation, and most governments have found it necessary to exercise great caution in grants of corporate powers. Even religious, corporatious, professing, and in the main truly, nothing but the general good, have proved obnoxious to this objection, so that in England it was long ago found necessary to restrict them in their powers of acquiring real estate. Freed as such bodies are from that sure bound to the operations of individuals—the grave—they are able to add field to field and power to power until they become entirely too strong for a society made up of those whose practices are limited by a single life!' "

In Morris Coal Co. *vs.* Barclay Coal Co., 68 Penn. St., 173, 8 Am. Rep., 159 (A. D. 1871), a draft had been given in furtherance of an agreement entered into by five coal corporations of Pennsylvania to divide the market for coal from the regions over which they had control, in certain proportions; to appoint a committee to take charge of their business, direct the delivery by each company of its proportion of coal, adjust prices, &c. * * * By their combination they had the power to control the entire market in that district, and did control it by a contract not to sell coal otherwise than as therein provided, and not to sell under prices fixed by a committee, and to suspend shipments upon notice that their allotted share of the market had been sold. Referring to evidence on behalf of the plaintiff that the true object of the agreement was to lessen expenses, advance the quality of the coal, and deliver it in the markets in the best order, the court said (p. 163) that it was "*immaterial*" whether this was true or not, because "The important fact is that these companies control this immense coal-field, the great source of supply of bituminous coal to the State of New York and large territories westward; that by this contract they control the price of coal in this extensive market and make it bring sums it would not command if left to the natural lines of trade; that it concerns an article of prime necessity for many uses; that its operation is general in this large region and affects all who use coal as a fuel."

And in that connection it quoted from Mitchell *vs.* Reynolds (1 Smith Lead. Cas., 172) the following language: "'To obtain the sole exercise of any known trade throughout England is a complete monopoly and against the policy of the law.' A reason given is 'The great abuses these voluntary restraints are liable to, as, for instance, from corporations who are laboring for exclusive advantages in trade and to reduce it into as few hands as possible.'"

We repeat that if in any of these cases instead of roundabout provisions for *contract*, *committees*, &c., the parties had agreed to consolidate their interests into a single company and secured by this device the same co-operation against outsiders, the language in regard to *monopoly* would have been at least equally pertinent.

In State *vs.* Standard Oil Co., 49 Ohio St., 137, 34 Am. St. Rep., 541 (A. D. 1892), the fact that a majority of the stockholders in several companies had agreed to, and did, transfer their stock to trustees to hold in trust for the transferors, to exercise the power and control of the affairs of the companies, &c., was held to tend to establish a virtual monopoly of the business for which the companies were organized; and the court thereupon remarked as follows (Am. St., p. 553):

"Much has been said in favor of the objects of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its products to the consumer; but such is not one of the usual or general results of a monopoly, and it is the policy of the law to regard not what *may*, but what generally *does*, happen. Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others. The claim to having cheapened the price to the consumer is the usual pretext on which monopolies of this kind are defended, and is well answered in Richardson *vs.* Buhl, 77 Mich., 632. After commenting on the tendency of the combination known as the Diamond Match Company to prevent fair competition and control prices, Champlin, judge, said: 'It is no answer to say that this monopoly has in fact reduced the price of friction matches; that policy may have been necessary to crush competition. The fact exists that it rests in the discretion of this company at any time to raise the price to an exorbitant degree.'

"Monopolies have always been regarded as contrary to the spirit and policy of common law. The objections are stated in 'Case of Monopolies,' Darcy *vs.* Allein, 11 Coke, 84*b*. They are these: 1. 'That the price of the same commodity would be raised, but he who has the sole selling of any commodity may well make the price he pleases.' 2. 'The incident to a monopoly is that after the monopoly is granted the commodity is not so good and merchantable as it was before, for the patentee having the sole trade regards only his private benefit and not the commonwealth.' 3. 'It tends to the impoverishment of divers artificers and others, who before by the labor of their hands in their art or trade had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary.' This third objection, though frequently overlooked, is none the less important. The society in which a few men are the employers and the great body are the employés or servants is not the most desirable in the Republic, and it should be as much the policy of the law to multiply the numbers engaged in independent pursuits or in the profits of production as to cheapen the price to the consumer. Such policy would tend to an equality of fortune among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. It is true that in the case just cited the monopoly had been created by letters patent, but the objections lie not to the manner in which the monopoly is created. The effect on industrial liberty and the price of commodities will be the same whether created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the invariable laws of human nature competition will be excluded and prices controlled in the interest of those connected with the combination or trust" (p. 554).

In Texas Standard Oil Co. *vs.* Adoue, 83 Tex., 650, 29 Am. St., 690 (A. D. 1892), a contract had been made between independent dealers and manufacturers in the same line of business (cotton-seed-oil mills), the purpose of which was to prevent competition, reduce the price of raw materials, and enhance that of the manufactured product. Thereupon the court said:

> "It thus appears that the above artificial regulations of the value or prices of these staple articles of trade as well as the arbitrary restrictions imposed by the contract upon the right to deal in them in the usual or customary way of legitimate business was intended to apply to and control as far as the contracting parties were able to do so the market in reference to these staples, and the agreement embraces in its operation the chief cities or commercial centers of the State as well as the cotton-producing regions thereof, as we judicially know. There seems to us to be scarcely anything lacking to characterize the combination between the parties in this case, as evidenced by the language and purpose of their agreement, as a complete monopoly, except proof that they were the only parties who were engaged at the specified localities in the manufacture referred to in the contract at the time it was made" (p. 698).

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Special U. S. Attorney.

RICHARD OLNEY,
Attorney General.
LAWRENCE MAXWELL, JR.,
Solicitor General.

156-1

~~FILED.~~
OCT 22 1894
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

156-1

No. 675.

THE UNITED STATES,
Appellant,
vs.

E. C. KNIGHT COMPANY, SPRECKELS SUGAR REFINING COMPANY ET AL.,
Appellees.

BRIEF FOR APPELLEES.

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In the Supreme Court

ON APPEAL FROM THE

U. S. CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

UNITED STATES

AGAINST

E. C. KNIGHT COMPANY ET AL.

No. 675. In Equity.
Brief for the American Sugar Refining Co. *et al.*

The American Sugar Refining Company, a New Jersey corporation, under authority conferred upon it by a statute of New Jersey (Act of May 9, 1889, P. L., 1889, p. 412; Act of April 4, 1888, P. L. 1888, p. 385), purchased the stock or a large part of the stock of the E. C. Knight Company, the Franklin Sugar Refining Company, the Spreckles Sugar Refining Company and the Delaware Sugar House, four Pennsylvania sugar-refining corporations.

The State law of Pennsylvania, as decided by its courts, permits a foreign corporation to acquire and hold the stock of a Pennsylvania corporation.

Commonwealth vs. Railroad Company, 132 Pa. St., 591; 139 Pa. St., 457.

In making the several purchases referred to, the American Company was careful to keep the negotiations separate, not disclosing to the parties interested in either of the four corporations the negotiations for the purchase of the stock of the others. The parties interested as sellers acted wholly independently. Those interested in the stock of either company had nothing to do with and had no knowledge about the other purchases.

There was no agreement on the part of either seller to abstain from making sugar. Each seller was free to resume business whenever he saw fit.

The United States claims that the transaction was in violation of the "Act to protect trade and commerce against unlawful re-"straints and monopolies," passed July 2, 1890, sections one and two of which read as follows:

> "SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.
>
> "Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court.
>
> "SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court."

Under Section4, which provides that the several Circuit Courts of the United States are vested with jurisdiction to "*prevent and restrain*" violations of the act, the District Attorney instituted this proceeding in equity, and asked a decree for an injunction, etc.

The bill asserts that the purchases of stock by the American Company were made under contracts. For relief it asks that the contracts may be canceled, and that the American Company may be ordered to deliver to the sellers the stock received from them, and that the sellers may be ordered to deliver to the American Company the stock of that company received in payment.

It is difficult to see what process of injunction or restraint could accomplish this. The injunction asked for was that the defendants should be restrained from violating the statute of 1890!

Obviously, an injunction to restrain the performance of the alleged agreements for the purchase of the stock of the four companies would accomplish nothing. The sale of the stock followed upon the negotiations for its purchase. Aside from that there were no contracts. Any agreements that did exist came to an end when the sale was consummated. The fact that any redress for which the statute of 1890 provides does not fit this transaction shows of itself that the transaction is not within what must have been the intention of Congress. The language used in the act, and any mischief which it could have been intended to prevent, show that it related to executory contracts between competitors in any line of business by which trade is restrained or there is an attempt to create a monopoly. In such cases the prevention of the performance of the contracts leaves the competitors to carry on their business independently.

Vide U. S. vs. Jellico, &c., Coke Co., 46 Fed. R., 432.

What this suit attempts is to interfere with the right of a citizen of New Jersey to buy and of a citizen of Pennsylvania to sell stock in a corporation; a transaction purely local, and permitted and provided for by the laws of all the States in the provisions which they make for the organization of incorporated companies.

This is recognized by the bill in this suit. It asks in its prayer that the purchase and sale of the stock may be undone; relief which is not only impossible, but wholly outside of the Act of 1890.

The jurisdiction in equity which Section 4 of the act vests in the Circuit Courts of the United States is "to prevent and restrain" violations of the act. There is nothing in this case which could be restrained except the operation of the refineries of the several companies whose stock was bought. If the statute permitted any such relief it would be a fitting commentary upon the unwisdom of legislative attempts to interfere with the natural course of trade.

The result would be to close the Philadelphia refineries, and to that extent, to restrain trade and to aid the monopolizing of the business by other refineries. The statute neither grants such relief nor provides for such a case.

The Philadelphia refineries carry on their business independently. The American Company has no relation to them other than that which comes from its ownership of their stock. Any restraint put upon it or any restraint put upon them can only be to close the refineries.

This is exactly what did occur in California. There were two refineries there. Against one, proceedings were taken for an injunction, receivership, &c., the result being to give a monopoly of the business to the other.

The defendants contend :

1. That the Statute of 1890 is penal ; that it is, therefore, to be strictly construed.

2. That it is also to be strictly construed, for the reason that its purpose is to put limitations and restraints upon the general right to carry on business.

3. That as the statute does not define what shall constitute a contract in restraint of trade or a monopoly, resort must be had to the common law for the true meaning and definition of the terms used.

4. That if all that was claimed by the United States for the transaction in question were true, it would not constitute an arrangement in restraint of trade or an attempt at monopoly.

5. That if this were otherwise what is claimed to have occurred does not come within the commerce jurisdiction of Congress.

6. And that Congress could not create a crime, and by giving jurisdiction in equity deprive of the right of trial by jury.

All of the questions involved have been before the Federal Courts in numerous decisions.

U. S. vs. Greenhut, 50 Fed. Rep., 469.
In re Corning, 51 Fed. Rep., 205.
In re Terrell, 51 Fed. Rep., 213.
In re Greene, 52 Fed. Rep., 104.
U. S. vs. Nelson, 52 Fed. Rep., 646.
U. S. vs. Patterson, 55 Fed. Rep., 605.
Dueber Watch Case Co. vs. Howard, 55 Fed. R., 851.
U. S. vs. Trans Missouri Freight Assn., 53 Fed. Rep., 440; affirmed by Circuit Court of Appeals, 58 Fed. Rep., 58.
U. S. vs. Armstrong, 2 Curt., 446.
U. S. vs. Coppersmith, 4 Fed. Rep., 198.
McCool vs. Smith, 1 Black, 459, 469.
McDonald vs. Hovey, 110 U. S., 619, 628.

The decision *In re Greene* was by Mr. Justice JACKSON, then sitting as Circuit Judge. It was so recent as August, 1892. It decides every point in this suit against the United States. It is the case referred to in the report of the Attorney-General presented at the opening of the late session of Congress. Unless by the decision of the Supreme Court a different effect shall be given to the Statute of 1890, *In re Greene* may be accepted as controlling authority.

It is respectfully submitted that Mr. Justice JACKSON's discussion *In re Greene* is unanswerable. It would be vain to attempt to add anything to it. It is printed as an Appendix.

In accord with Judge JACKSON's opinion and decision are the following other cases:

U. S. vs. Greenhut, 50 Fed. R., 469.
In re Corning, 51 Fed. R., 205.
In re Terrell, 51 Fed. R., 210.
U. S. vs. Nelson, 52 Fed. R., 104.
U. S. vs. Patterson, 55 Fed. R., 605.
Dueber Watch Case, &c., Co. vs. Howard, 55 Fed. R., 851.
Vide, also, U. S. vs. Trans. Missouri Freight Assn., 53 Fed. R., 440; 58 *Ib.*, 58.

Vide, also, Opinions of Judge Butler (p. 208), and Judge Dallas (p. 216), in this suit.

All that I feel at liberty to do is to add a reference to some case on the general subject and refer to a few general considerations :

FIRST.

If all that were claimed by the United States from the transaction in question were true, it would no constitute an agreement in restraint of trade or an attempt at a monopoly.

The agreements which the bill alleges to have been made by th American Company are in the bill stated to have been made on o about March 4th, 1892. It is asserted that by them the America Company by John E. Searles, Jr., "agreed to purchase the stock o the four other companies." It is further asserted that the purchas was subsequently made. No other agreement is alleged. There i no assertion in the bill that there was ever made a contract fixing price, limiting production, or preventing any of the parties concerne or any one else from continuing in the business, going anew into th business, or carrying on the business. The fact was proven to b just the reverse.

The most that can be claimed about the transaction is that practically it is (it is not) like one where a number of persons engaged i carrying on a similar business form a corporation and to that corporation transfer the properties which were used by them in thei individual business.

This is not against the law in any of the States. It does no violate any act of Congress.

Congress itself has provided for the formation of corporations.

Business Corporations in the Territories, U. S. Rev. Stats., § 1889.

Corporations in the District of Columbia, Rev. Stats., D. C., § 553, *et seq.*, Act Oct. 1, 1890; 26 Stat. L., 625.
National Banking Corporations, U. S. Rev. Stats., §§ 5133, 5134, 5135, 5136 *et seq.*

In all the States the tendency for many years has been to facilitate the formation of corporations and the transfer to such corporations of the properties which the incorporating stockholders had used in their individual business.

Morawetz on Corporations, § 27.
Alabama Laws 1876, No. 142, p. 244.
Arizona Laws 1887—Rev. Stats. Arizona, 1887, pp. 93–119.
Arkansas Laws 1869, No. 92, p. 179.
Mansfield's Digest, 1884, 331.
California Laws 1850, Chap. 128, p. 347.
Colorado Laws 1877, Chap. 19; General Laws 1887, 143.
Connecticut Laws 1837, Chap. 63, p. 49.
Dakota (Terr.) Laws 1887, Chap. 35.
Delaware Laws 1875, p. 181 (see Constitution Amend., Laws 1875, p. 3).
Florida Laws 1868, Chap. 1639, p. 118.
Georgia Laws 1843, p. 108.
Idaho Laws 1887; Rev. Stats. 1887, p. 312.
Illinois Laws 1871–2, p. 296.
&c., &c., &c.

The great progress and development of the country in the direction of transportation, mines, manufactures and public works have been contemporaneous with the creation of corporations and with legislation in aid of that mode of carrying on important business. Such progress and development are directly due to the corporate mode in which capital and individual effort may be aggregated and combined.

It is safe to say that except through corporate action the existence of the railroad system which extends through all parts of the country, the facilities for transportation which reach everywhere, the contribution to the national wealth of vast mineral resources, and the making of manufactured products which support a large population and make the country independent of other lands, would be impossible.

Passing from arrangements which combine competitive business into corporations, to agreements between competitors in the same line of business to limit production or to maintain price, I contend that, according to modern economical ideas and the decisions of the Courts, they are not necessarily in restraint of trade or to be condemned as attempts at monopoly. It is not invariably, if at all, true that competition is the life of trade. Quite as frequently it may be the ruin of business. Failures in business can be ascribed, more than to any other cause, to unmeasured competition. All classes of the community, those who contribute their capital, and who will only do so if it may earn a suitable return, the workman, whose interest is to receive remunerative wages, the producers of raw material, the owners of real estate which is used for business purposes, and the vast number who benefit by the distribution and use of wealth, are concerned that business shall be done upon a paying basis. That is the only basis upon which it will be done.

And the greater the aggregation of capital and labor, the greater is the advantage both to those who sell and to those who buy. It is only by making prices so low as to defy competition that competition can be prevented. And it is only by an aggregation of capital and labor that prices can be thus reduced. This is now recognized by the leading writings on economic subjects.

Vide

"Political Science Quarterly," September, 1888; article of Mr. Gunton on the "Economic and Social Aspect of Trusts."

John Stuart Mill, "Political Economy," pages 162, 164, 167, 174.

Thorold Rogers, "Work and Wages," page 543.

Simon Newcomb, "Principles of Political Economy,' page 101.

Francis Bowen, "American Political Economy," page 110.

Buckle's "History of Civilization," Vol. 1, page 225.

Gilbarth's "History of Banks;" Smollet's "History of England," Chap. IV.

Greenhood on Public Policy, pages 687, 688.

Professor J. W. Jenks, in the September, 1894 number of the "Political Science Quarterly," article "Capitalistic Monopolies."

The gist of this last article is that, although the aggregation of capital may result in an increase of profit, this is not inconsistent with the benefit which comes to consumers from the economy of doing business on a large scale and the saving of the expense which results from competition. He alludes to the case (p. 489) of tobacco manufacturers who were expending annually some three millions of dollars in bidding against one another.

Professor Jenks says :

> "Besides this enormously expensive system of advertising and of selling, there are many other losses in competition. Were all the leading manufacturers in almost any line united, the advantages that one has from excellent patents or improved processes of production would inure to the benefit of all. The cost of superintendence would be much reduced, and that of special expert knowledge could be diminished by from fifty to ninety per cent. The goods could be sent to customers from the nearest establishment, and thus a great cost of transportation could be saved. A large proportion of the capital employed in both plants and running expenses could be spared to other enterprises, as well as a goodly percentage of the labor."

The point of Professor Jenk's article is in this expression (p. 486) :

> "It is time that the public, with the economists, give up the idea that free, unlimited competition is the only normal condition of business, so far as fixing prices is concerned, and that they recognize the principle of combination and monopoly as equally normal in some places."

An examination of the record will show that just the benefits referred to resulted from the purchase by the American company of the stock of the Philadelphia refineries. Great and unnecessary expenses were saved or reduced. The output of sugar was not diminished nor was the average price to the consumer increased.

No more striking evidence of the change upon this subject of the most thoughtful and intelligent opinion of the most commercial country in the world can be found than in the fact that by the Statute of 7 and 8 Victoria, Chap. 24 (1844), some forty enactments of the

English, Scottish and Irish Parliaments, one dating as far back as the reign of Henry III., all interfering with the natural course of trade, were wholly or in part repealed.

This whole subject has recently received consideration from the most eminent English Judges up to the House of Lords in

> Mogul Steamship Co. vs. McGregor, 21 Q. B. Div., 544 ; 59 L. T., 514.
>
> 6 Asp. M. C., 320 ; affirmed in the Court of Appeals, 23 Q. B. D., 598.
>
> 58 L. J., Q. B., 465 ; 37 W. R., 756.
>
> 53 J. P., 709 C. A. ; affirmed in the House of Lords (1892) App. Cas., 25.

That case establishes for England the doctrine :

" Owners of ships, in order to secure a carrying trade exclusively for themselves and at profitable rates, formed an association and agreed that the number of ships to be sent by members of the association to the loading port, the division of cargoes and the freights to be demanded, should be the subject of regulation ; that a rebate of 5 per cent. on the freights should be allowed to all shippers who shipped only with members ; and that agents of members should be prohibited on pain of dismissal from acting in the interest of competing shipowners ; any member to be at liberty to withdraw on giving certain notices.

" The plaintiffs, who were ship owners excluded from the association, sent ships to the loading port to endeavor to obtain cargoes. The associated owners thereupon sent more ships to the port, underbid the plaintiffs, and reduced freights so low that the plaintiffs were obliged to carry at unremunerative rates. They also threatened to dismiss certain agents if they loaded the plaintiff's ships, and circulated a notice that the rebate of five per cent. would not be allowed to any person who shipped cargoes on the plaintiffs' vessels. The plaintiffs having brought an action for damage against the associated owners alleging a conspiracy to injure the plaintiffs :

" Held, affirming the decision of the Court of Appeal (23 Q. B. D., 598), that since the acts of the defendants were done with the lawful object of protecting and extending their trade and increasing their profits, and since they had not employed any unlawful means, the plaintiffs had no cause of action."

In accordance with that decision are :

> Palmer vs. Stebbins, 3 Pick., 188 ; decided as far back as 1825.
>
> Central Shade Rolling Co. vs. Cushman, 143 Mass., 353.

U. S. cases:

Nav. Co. vs. Winsor, 20 Wall., 64.
Carter vs. Alley, 43 Fed. R., 208.
Gibb vs. Gas Co., 130 U. S., 409, per Fuller, C. J.
Fowle vs. Park, 131 U. S., 88, 97, per Fuller, C. J.
Chicago Ry. vs. Pullman, 139 U. S., 79.
U. S. vs. Trans. Missouri Freight Assn., 58 Fed. Rep., 58.

N. Y. cases:

Good vs. Doland, 121 N. Y., 1.
Tode vs. Gross, 127 N. Y., 480.
Matthews vs. Ass. Press., 136 N. Y., 333.
Diamond Match Co. vs. Roeber, 106 N. Y., 473.
Leslie vs. Lorillard, 110 N. Y., 519.
Marsh vs. Russell, 66 N. Y., 288.
People vs. North River S. R. Co., 121 N. Y., 582.

It is usually supposed that the New York Court of Appeals in the last case decided that the so-called Sugar Trust violated the law in respect of restraint of trade, etc. This is not so. The Supreme Court, from which was taken the appeal to the Court of Appeals, had held that the arrangement under consideration was against the law, and that for that reason the charter of the North River Sugar Refining Company was to be forfeited. The Court of Appeals was asked to affirm this and to decide that the so-called Sugar Trust was "illegal," was "injurious to trade and commerce," "tended to the suppression of competition and the enhancement of prices and constituted a monopoly," etc.

Vide Brief of the Attorney-General, pp. 603, 604.

The Court of Appeals held that the North River Company in its corporate capacity had entered into a partnership, and that this was in violation of its charter. The opinion of the Court proceeds (p. 626):

"Having reached that result, it becomes needless to advance into the wider discussion over monopolies and competition and restraint of trade and the problems of political economy. Our duty is to leave them until some proper emergency compels their consideration. Without either approval or disapproval of the views expressed upon that branch of the case by the Courts below, we are enabled to decide that in this State there can be no partnerships of separate and independent corporations," etc.

NOTE.—The proposition contained in the brief for the Government to the effect that the power to control a particular line of business constitutes a monopoly is in conflict with every case and with every text-book dealing with the subject.

It is universally held that to constitute a monopoly something must be done to deprive other persons of the right to engage in the same business. A monopoly of a business in the sense that it is only or largely carried on by one person may be due to an infinite variety of causes.

It may be that the one person carries on the business so economically as that it is impossible for others to engage in it without loss. It may be that the one person has the control of secret processes or of modes of manufacture known only to him, which make it impossible for others to engage in the business on as favorable terms. It may easily be that, by reason of failures or misfortunes, all establishments engaged in a particular line of business may be wiped out, and that only one shall remain.

Is it seriously contended that this constitutes a monopoly in the sense in which that term, as used in the Act of 1890, is to be judicially construed? Is it possible that Congress can have intended to make criminal the ability to do a particular line of business with such success as to absorb in one establishment a large part of the business? Judged by such a standard every one of the large establishments which have come into being in recent years, and which in large cities have absorbed so large a part of particular kinds of business, is criminal.

Monopoly means something more than this. It involves the idea not only of a successful prosecution of business by the person stigmatized as a monopolist, it involves also the necessity of some agreement or resort to illegal means by which other persons have been driven out of the business.

The record in this case establishes that every citizen of the

United States is and at all times has been at liberty to do sugar refining; every stockholder of the four Philadelphia refineries has been free to engage in the business of refining at all times. Although there were written agreements for the purchase by the American Company of the Philadelphia stock, those agreements contained no provision putting any restraint or prohibition upon business. According to the testimony of the Government witnesses, the subject was not alluded to in any of the negotiations. The Government proved affirmatively that the transactions complained of did not impose any restraint upon trade or create a monopoly. It is a novel, it is a preposterous suggestion that a person conducting business on a large scale and having a large proportion of a particular line of business, who sees fit to conduct his business according to the requirements of consumers, is guilty of a crime if, consumption diminishing, his business is correspondingly reduced.

In re Green, 52 Fed. Rep., 104:

By the Court: "It will be noticed that in all the foregoing definitions of 'monopoly' there are embraced two leading elements, namely, an exclusive right or pirvilege on one side and a restriction or restraint on the other which will operate to prevent the exercise of a right or liberty open to the public before the monopoly was secured. This being, as we think, the general meaning of the term as implied in the second section of the statute, an attempt to monopolize any part of the trade or commerce among the States must be an attempt to secure and acquire an exclusive right in such trade or commerce by means which prevent or restrain others from engaging therein. It was certainly not a monopoly in the legal sense of the term for the accused or the Distilling and Cattle Feeding Company to own seventy distilleries and the proceeds thereof, whether such products amounted to the whole or a large part of what was produced in the country."

U. S. vs. Trans-Missouri Freight Association, 58 Fed. Rep., 82:

By the Court: "A monopoly of trade embraces two essential elements: 1. The acquisition of an exclusive right to, or the exclusive control of, that trade; and 2, the exclusion of all others from that right and control. There is nothing in this contract indicating any purpose or intent to obtain such a monopoly."

Leslie vs. Lorillard, 110 N. Y., 519-34:

By the Court: "The doctrine relating to contracts in restraint of trade has been elaborately discussed in a careful opinion of Andrews, J., in the recent case of Diamond Match Co. vs. Roeber, 106 N. Y., 473. Under the authority of that case it may be said that no contracts are void as being in general restraint of trade where they operate simply to prevent a party from engaging or competing in the same business. It is there said (p. 483): 'To the extent that the contract prevents the vendor from carrying on the particular trade it deprives the community of any benefit it might derive from his entering into competition. But the business is open to all others, and there is little danger that the public will suffer harm from lack of persons to engage in a profitable industry. *Such contracts do not create monopolies. They confer no special or exclusive privileges.*'

"Under the doctrine of that case it is difficult to see how the contracts which are complained of here are open to the objection suggested by counsel. Regarded only in the light of what they intended to effect, these agreements removed a business rival whose competion may have been deemed dangerous to the success or maintenance of the business of the Old Dominion Company. They could not, of course, exclude all competition in the business, but would in that particular case. How, then, is the result different from the simpler case of the sale by an individual of his business and his right to conduct it in a particular part of the land? The doctrine held by this Court in Diamond Match Co. vs. Roeber, *supra*, should control in the case at bar, and these contracts therefore cannot be considered objectionable on the ground that they restrained competition. Whether competition in this particular business would be a public benefaction or its restraint a source of prejudice, we are unable of course to judge. I do not think that competition is invariably a public benefaction, for it may be carried on to such a degree as to become a general evil."

U. S. vs. Trans-Missouri Freight Association, *supra*:

By the Court (after citing numerous cases): "A more extended view of the authorities strengthens this conclusion and makes plain the line of demarkation which separates legal contracts that incidentally restrict competition from illegal contracts in restraint of trade (citing Mitchell vs. Reynolds, 1 P. Wms., 181; Gibbs vs. Gas Co., 140 U. S., 409; Mogul Steamship Co. vs. McGregor, Appeal Cases, 1892, p. 25, and many others). And in 1890 the Supreme Court of New Hampshire, in an exhaustive and persuasive opinion, held that contracts by which a railroad company leased its road and rolling stock to a competitor for many years were not necessarily against public policy or void at common law, when the purpose of the contracts and combinations did not appear to be to raise the rate of transportation above the standard of fair compensation or to violate any duty owing to the public by non-competing companies (Manchester R. Co. vs. Concord R. Co. (N. H.), 20 Atlantic Rep., 283). * * *

"From a review of these and other authorities it clearly appears that when the Anti-Trust Act was passed the rule had become firmly established in the jurisprudence of England and the United States that the validity of contracts restricting competition was to be determined by the reasonableness of the restriction. If the main purpose or natural and inevitable effect of the contract was to suppress competition or create a monopoly, it was illegal. If a contract imposed a restriction that was unreasonably injurious to the public interest, or a restriction that was greater than the interest of the party in whose favor it was imposed demanded, it was illegal. But contracts made for a legal purpose, which were not unreasonably injurious to the public welfare and which imposed no heavier restraint on trade than the interest of the favored party required, had been uniformly sustained, nothwithstanding their tendency to some extent to check competition."

SECOND.

The transaction under consideration did not come within the commerce power of Congress.

The only attempt to make out an interstate case in the bill is in the allegation that the products of the several refineries were sold and distributed among the several States and that all the said companies were engaged in trade or commerce with the several States and with foreign nations.

The cases are uniform that this does not bring such a transaction within the right by Congress to regulate commerce between the States or between the States and foreign countries.

Veazie vs. Moore, 14 Howard, 568-574 :

By the Court : "Nor can it be properly concluded that, because products of domestic enterprise in agriculture or manufactures or in the arts may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected is legitimately within the import of the phrase ‘foreign commerce,’ or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazer, the manufacturer, the mechanic, the immense operations of the collieries and mines and franchises of the country, for there is not one of these avocations the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals or railroads from point to point within the several States towards an ultimate destination like the one above mentioned.”

Coe vs. Errol, 116 U. S. Rep., 517:

By the Court: Do the owners' state of mind, in relation to the goods—that is, his intent to export them—and his partial preparation to do so, exempt them from taxation [by the State]? This is the precise question for solution.

This question does not present the predicament of goods in the course of transportation through a State, though detained for a time within the State by low water or other causes of delay, as was the case of the logs cut in the State of Maine, the tax on which was abated by the Supreme Court of New Hampshire. Such goods are already in the course of commercial transportation, and are clearly under the protection of the Constitution, and so we think would the goods in question be when actually started in the course of transportation to another State, or delivered to a carrier for such transportation. There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the State of their origin to that of their destination. * * * It is true it was said in the case of the “Daniel Ball,” 10 Wallace, 555, ‘whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.’ But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. The carrying them in cars or other vehicles, or even floating them to the depot where the journey is to commence, is no part of that journey. That is all preliminary work performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State.”

Kidd vs. Pearson, 128 U. S., 1:

Held, that a statute of a State providing that intoxicating liquors may be manufactured and sold within the State for mechanical, medicinal, culinary and sacramental purposes, but for no other, not even for the purpose of transportation beyond the limits of the State, does not conflict with the Constitution of the United States by undertaking to regulate commerce among the States; and that the right of a State to enact a statute prohibiting the manufacture of intoxicating liquors within its limits, is not affected by the fact that the manufacturer of such spirits intends to export them when manufactured.

BY THE COURT: "We think the construction contended for by plaintiff in error would extend the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its objects and scope. The language of the grant is: 'Congress shall have power to regulate commerce with foreign nations and among the several States,' etc. These words are used without any veiled or obscure signification. 'As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said' (*Gibbons vs. Ogden, supra*, at page 188).

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term as given by this Court in *County of Mobile vs. Kimball*, 102 U. S., 691, 702, is as follows: 'Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplated the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of those delicate, multiform and vital interests—interests which, in their nature, are and must be local in all the details of their successful management. * * * 'Over this commerce and trade [the internal commerce and domestic trade of the States] Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the Legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.' The manufacture of intoxicating liquors in a State is none the less a business within that State because the manufacturer intends, at his convenience, to export such liquors to foreign countries or to other States."

The incorporation of the American Company was purely local. It was provided for by the statutes of the State of New Jersey.

And this is equally true of the incorporation of the four Pennsylvania refining companies. The sale of the stock was not an interstate proceeding. Any attempt to interfere with such a sale upon the claim that the purchaser resided in one State and the seller in another would be not only beyond the jurisdiction of Congress, but in direct violation of the Constitution of the United States.

Powell vs. Pennsylvania, 127 U. S., 678:

By the Court, HARLAN, J.: "The main proposition advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property as guaranteed by the Fourteenth Amendment. The Court assents to this general proposition as embodying a sound principle of constitutional law."

Butchers' Union Company vs. Crescent City Company, 111 U. S., 746–757:

FIELD, J.: "Common business and callings in life, the ordinary trades and pursuits which are innocuous in this and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same condition. The right to pursue them without let or hinderance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

Bradley, J.: "I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the priviliges of a citizen of the United States."

People vs. Marx, 99 N. Y., 377–386:

By the Court, Rapallo, J.: "The Fourteenth Amendment provides (quoting it). These constitutional safeguards have been so thoroughly discussed in recent cases that it would be superfluous to do more than refer to the conclusions which have been reached bearing upon the question now under consideration. Upon these no proposition is more firmly settled than that it is one of the fundamental rights and privileges of every American citizen to adopt and follow such lawful industrial pursuit not injurious to the community as he may see fit. The term 'liberty,' as protected by the Constitution, is not cramped into a mere freedom from physical restraint of the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare."

Matter of Jacobs, 98 N. Y., 98–106:

By the Court, Earl, J.: "Liberty, in its particular sense as understood in this country, means the right not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements (except as such laws may be passed in the exercise by the Legislature of the police power which will be noticed later), are infringements upon his fundamental rights of liberty which are under constitutional protection."

People vs. Gillson, 109 N. Y., 389:

By the Court: "It cannot be truthfully maintained that this legislation does not seriously infringe upon the liberty of the owner or dealer in food products to pursue a lawful calling in a proper manner, or that it does not, to some extent at least, deprive a person of his property by curtailing his power of sale, and unless this infringement and deprivation are reasonably necessary for the common welfare, or may be said to fairly tend in that direction, or to that result, the legislation is invalid, as plainly violative of the constitutional provision under discussion."

Frorer vs. People, 31 N. E. Rep. 395, (Illinois) :

BY THE COURT : "The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract. Our Constitution guarantees that no person shall be deprived of his life, liberty or property without due process of law (Section 2, Art. 2), and says Cooley : 'The man or the class forbidden the acquisition or enjoyment of property in the manner permitted, the community at large would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness' (Cooley, Const. Lim., 1st Ed., p. 393).

THIRD.

No Federal court of equity has or can be clothed with jurisdiction to grant relief upon the case made by the bill and proof.

The statute in question enacts, first, that accomplished violations of it shall be misdemeanors, punishable by fine and imprisonment ; secondly, that threatened violations of it may be prevented by injunction. "The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act."

In the case at bar it is not the contemplated action of the defendants in the future which is complained of, but their conduct in the past.

If the defendants come in any way under the provisions of the statute, it is because they have committed the crimes created and defined by it ; and if in consequence thereof the Court, on the prosecution of the United States only, can now take any judicial action against the defendants, it can only be by way of inflicting some penalty or punishment upon them for the commission of these crimes. There are no civil rights of the United States or its citizens which the acts alleged against the defendants have infringed; or which the Courts, in the exercise of their civil jurisdiction, might be asked to restore. It is an offense against prescribed rules of conduct which they are asked, in the exercise of their criminal jurisdiction, to punish.

A court of equity has no such inherent jurisdiction; nor has Congress undertaken to clothe the Federal courts of equity with any such jurisdiction; nor has it the constitutional power even to confer, as it has attempted to do, a quasi-criminal jurisdiction upon them by authorizing them to enjoin the anticipated commission of crime.

1. It is not necessary to argue that it is no part of the jurisdiction of a court of equity to punish for the commission of a crime.

In re Sawyer, 124 U. S., 209:

"Under the Constitution and laws of the United States the distinction between common law and equity as existing in England at the time of the separation of the two countries has been maintained, although both jurisdictions are vested in the same Court (Fenn vs. Holme, 24 How., 481; Thompson vs. Railroad Co., 6 Wall., 134; Heine vs. Levee, Commissioners, 19 Wall., 655).

"The office and jurisdiction of the court of equity, unless enlarged by express statute, are limited to protection of rights of property. It has no jurisdiction over the prosecution or punishment or the pardon of crimes or misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses or for the removal of public officers is to invade the domain of the courts of common law or of the executive and administrative departments of the Government. * * * In Sheridan vs. Colvin, 78 Ill., 237, it was held that a court of chancery had no jurisdiction to restrain by injunction a City Council from passing an ordinance unlawfully abolishing the office of Commissioner of Police; and the Court, repeating in great part the opening propositions of Kerr on Injunctions, said: 'It is elementary law that the subject matter of the jurisdiction of a court of chancery is civil property. The Court is cognizant only of questions of property and the maintenance of civil rights. Injury to property, whether actual or prospective, is the foundation on which the jurisdiction rests. The Court has no jurisdiction in matters merely criminal or merely immoral which do not affect any right to property. Nor do matters of a political nature come within the jurisdiction of the Court of Chancery.' "

In the United States the Federal courts of equity are of course expressly debarred from exercising any such jurisdiction by the Sixth Amendment, securing to the accused in all criminal prosecutions the right to a trial by jury.

2. Congress has carefully refrained from attempting to clothe the Federal courts of equity with any jurisdiction to punish the commission of a crime.

The statute does no more than " invest them with jurisdiction *to prevent and restrain* " violations of this act. Violations of the act, once committed, are expressly relegated to the usual course of criminal procedure for ascertainment and punishment.

High on Injunctions, Section 23 :

" The appropriate function of the writ of injunction is to afford preventive relief only, and not to correct injuries which have already been committed, or to restore parties to rights of which they already have been deprived. It is not, however, an appropriate remedy to procure relief for past injuries, and it is only to be used for the prevention of a future injury actually threatened, and to prevent the perpetration of a legal wrong, for which no adequate remedy can be had in damages. And if the act sought to be enjoined has already been committed, equity will not interfere, since the granting of an injunction under such circumstances would be a useless act " (citing many cases).

3. Congress has not the constitutional power to invest the Federal courts of equity even with the quasi-criminal jurisdiction of enjoining the anticipated commission of crime.

That this is no part of the inherent jurisdiction of courts of equity is clear.

In re Sawyer, *supra.*

High on Injunctions, Section 20 :

" The subject matter of the jurisdiction of equity being the protection of private property and of civil rights, courts of equity will not interfere for the punishment or prevention of merely criminal or immoral acts unconnected with violations of private right. Equity has no jurisdiction to restrain the commission of crimes or to enforce moral obligations and the performance of moral duties; nor will it interfere for the protection of an illegal act merely because it is illegal. And in the absence of any injury to property rights it will not lend its aid by injunction to restrain the violation of public or penal statutes, or the commission of immoral and illegal acts (citing many cases). Thus, the relief has been refused to prevent persons from carrying on the business of banking in violation of a statute restraining unincorporated banking associations. So, where it was sought to enjoin defendants from running their street cars on Sunday in violation of a statute making it a penal offense, the relief was refused, although the action was brought by pew-holders and property owners on the line of the defendant's track. In all such cases ample remedy may be had by proceedings at law, and, the offense being *damnum absque injuria*, courts of equity will not interfere."

Cope vs. The Fair Association, 99 Ill., 489:

A stockholder of a Fair Association filed a bill to restrain the company from permitting for a pecuniary reward gamblers to congregate and ply their vocation on the Fair grounds. The Court refused the injunction.

By the Court: "It is no part of the mission of equity to administer the criminal law of the State, or to enforce the principles of religion and morality, except so far as it may be incidental to the enforcement of property rights, and perhaps other matters of equitable cognizance. * * * Gambling, such as that complained of, is a violation of the Criminal Code, which affords ample means for its suppression."

Spellier on Extraordinary Relief, Section 24:

"Equity has no jurisdiction to interpose for the prevention of crime, or to enforce moral obligations, nor will it interfere for the prevention of illegal acts merely because they are illegal. Aid will not be extended by injunction to restrain the violation of public or penal statutes, or in any such case, in the absence of any injury to property rights. One reason for non-interference is a fundamental want of jurisdiction; another is the existence of an adequate remedy at law. In other words, the subject matter of equity jurisdiction is the protection of civil rights and private property, and not the punishment or prevention of crime or immoral acts when not in connection with violations of private rights."

Carleton vs. Rugg, 22 N. E. Rep., 55 (Mass.):

By the Court: "It would be an anomalous proceeding for a Court to issue an injunction against the defendant's committing a crime or larceny of selling intoxicating liquors with a view to punish as disobedience of the injunction and contempt of court the same act which was before punishable as a crime. If that could be done, an accused person through a mere change of form in the proceeding might be punished for a crime without a trial by jury, and in violation of both our national and State Constitutions. There would be strong ground for contending that a statute which would attempt to authorize such a method of preventing or punishing ordinary crimes would be unconstitutional. Indeed, even where a plaintiff seeks the aid of a court of equity to protect him from irreparable injury through the threatened publication of a libel or the commission of some other like crime, the Courts decline to interfere."

And this inherent distinction between the legitimate functions of courts of equity and courts of law is made inviolate by the Constitution; and neither court can either be stripped of its appropriate jurisdiction or saddled with duties foreign to its nature. Congress is as incompetent to transform the Federal courts of equity into courts of criminal jurisdiction, as it is to impose upon a Federal court of common law duties not strictly judicial in their nature.

Root vs. Railway Company, 105 U. S., 189:

BY THE COURT, MATTHEWS, J.: "It is impossible, we think, to maintain the claim that the language of this act, similar in that respect to the previous acts of 1819 and 1836, conferring jurisdiction in patent cases in equity as well as at law, was meant to obliterate the distinction between these two jurisdictions or even to confuse the boundaries between them, as it is alleged was done by the decision in the case of Nevins vs. Johnson, 3 Blatchford, 80, and perhaps in other subsequent Circuit Court decisions.

"Indeed, it is the settled doctrine of this Court that *this distinction of jurisdiction between law and equity is constitutional* to the extent to which the Seventh Amendment forbids any infringement of the right to trial by jury, as fixed by the common law, and the doctrine applies in patent cases as well as others. This Court said, in Parsons vs. Bedford, 3 Peters, 433, speaking of the meaning intended by the framers of that amendment that, 'by common law, they meant what the Constitution denominated in the third article, law; not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined in contradistinction to those where equitable rights alone were recognized and equitable remedies administered.' The rule was repeated in Fenn vs. Holme (21 How., 481) in this language: 'In every instance in which this Court has expounded the phrases, proceedings at the common law and proceedings in equity, with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal; and the latter as meaning the administration with reference to equitable as contradistinguished from legal rights of the equity law as defined and enforced by the Court of Chancery in England.' "

Interstate Commerce Com. vs. Brimson, 154 U. S., 447, 485:

By the Court (after discussing *Hayburn's Case*, 2 Dall., 409; *Todd's Case*, 13 How., 51; *U. S. vs. Ferreira*, 13 How., 40; *Gordon vs. U. S.*, 117 U. S., 697, and *In re Sanborn*, 148 U. S., 222): "The views we have expressed in the present case are not inconsistent with anything said or decided in those cases. They do not in any manner infringe upon the salutary doctrine that Congress (excluding the special cases provided for in the Constitution, as for instance in section two of article two of that instrument) may not impose upon the Courts of the United States any duties not strictly judicial."

LAST.

The decree of the Circuit Court of Appeals should be affirmed.

Jno. E. Parsons,
For Appellees.

APPENDIX.

In re GREENE.

(Circuit Court, S. D. Ohio, W. D. August 4, 1892.*)*

52 Federal Reporter, 104.

JACKSON, Circuit Judge. The petitioner, a citizen and resident of Ohio, having been arrested and taken into the custody of the United States marshal of this district upon a warrant of a United States commissioner, here to await an order of the judge of the district court, under section 1014 of the Revised Statutes, for his removal to the district of Massachusetts for trial upon an indictment found and pending therein against him and others for alleged violations of the act of congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," has applied to this court to be discharged from such custody, claiming that he is illegally restrained of his liberty; that said indictment against him in the district court of Massachusetts, on which his arrest and confinement is solely based, charges him with no offense against the United States under said act of July 2, 1890; and that said district court has no jurisdiction over either his person or the alleged offense on which it is sought to remove him there for trial.

* * * * * * * *

The indictment is based upon alleged violations of sections 1 and 2 of the act of July 2, 1890, which read as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The indictment contains four counts. The 1st, 3d, and 4th allege violation of section 1, and the 2d count charges a violation of section 2. The 1st, 2d, and 3d counts recite, in the same general way, that on the 11th day of February, 1890, the petitioner and other associates, in the states of Ohio, Illinois, and New York, engaged with each other in a combination, in restraint of trade and commerce, in distillery products; that, for the purpose of restraining trade and commerce in said products among the several states of the United States, they, in the form and guise of a corporation known and designated as the Distillery & Cattle Feeding Company, which was on said 11th day of February, 1890, organized under the laws of Illinois, thereafter, and prior to August 1, 1890, obtained control, by purchase, renting, and leasing, 70 other distilleries within the United States used for the manufacture of said distilling products, which products were on February 11, 1890, and continuously thereafter, up to the finding of the indictment, "a subject of trade and commerce among the several states of the said United States;" that each of said distilleries were, at the respective dates of their purchase, renting, or leasing and running under said control, separate and distinct, and competing in the manufacture and sale of distilling products among the several states; that, in pursuance of said combination, they used, managed, and controlled all said distilleries, and by means thereof did, during the period last mentioned, manufacture and sell, and control the manufacture and sale, within the United States, of 77,000,000 gallons of said distillery products, said quantity being 75 per cent. of all the distillery products made and sold within and among the United States during said period; that the condition of trade and commerce in said products among the several states during said period was such that, by controlling the manufacture and sale of 75 per cent. of said distillery products, they were able to control and fix the price at which they would sell such products to dealers therein in the several states, and to control and fix the price at which such dealers should sell the same to citizens of the several states during said period; that by said means they intended to control the amount of said distillery products manufactured and sold among the several states, and to control and fix the price at which said distillery products should be sold by all dealers therein among the several states, and in the state of Massachusetts, and to prevent and counteract the effect of free competition in the usual price at which said products were sold among and within the several states, and to increse and augment the usual price thereof, and thereby exact and procure great sums of money from the citizens of Massachusetts and other states purchasing distillery products, and to secure to themselves exclusively the trade and commerce in said distillery products, and by all the means aforesaid unlawfully to restrain the trade and commerce in such products among the several states of the United States.

The first count then alleges that, in pursuance of said purpose and intent, they, under the form and guise of said Distilling & Cattle Feeding Company, on October 3, 1890, did at Boston, within the district of Massachusetts, "negotiate a sale, and did sell," to the firm of D. T. Mills & Co., 5,642.82 proof gallons of alcohol, which was then in the state of Illinois; that by reason of said combination, and of their control of the large number of distilleries and the manufacture of 75 per cent. of all such products in the United States, they did fix the price at which said D. T. Mills & Co., who were dealers therein at Boston, should and did sell said alcohol within said district of Massachusetts, or for transportation into any other state, "and did compel said Mills & Co. to sell said alcohol within said district of Massachusetts for use in said district, or for transportation to other states of the United States, at no less price than that fixed" by the accused; that by this means they controlled the amount of distilled products sold within the state of Massachusetts, and did fix the price at which said products were sold by dealers in said state; that they thereby prevented and counteracted the effect of free competition on the usual price at which said products were sold within the state, and did increase and augment the usual price at which said distillery products were sold in the state of Massachusetts for use therein or transportation therefrom, and that they thereby, and by the means aforesaid, did "restrain the trade and commerce in said distilling products between the state of Massachusetts and the states of the said United States other than the state of Massachusetts," contrary to the form of the statutes in such case made and provided.

The second count, based upon the second section of the act, after the aforesaid general recital, charges an unlawful attempt to monpolize the trade and commerce in distillery products under the form and guise of said Distilling & Cattle Feeding Company; and the specific acts therein alleged are that on September 18, 1890, C. I.

Hood, of Lowell, Mass., purchased from Webb & Harrison, as distributing agents of the accused, 526.52 proof gallons of alcohol; that the defendant, in the form and guise of the aforesaid company, promised said Hood a rebate of five cents per gallon on the purchase price of said alcohol, upon condition that for six months from the date of the promise he should have bought his supply or supplies of distillery products exclusively from said company's agents, and should not have sold any of the products so purchased at less than the company's distributing agents' list prices, and should furnish evidence of compliance with those conditions in the form of a certificate. This count alleges a similar arrangement with Kelly and Durkee on the sale to them, September 23, 1890, by the company's distributing agents, of 85.54 proof gallons of alcohol. It also sets out a list of the distributing agents from whom purchases could be made and the agreement of the company as to the five cents per gallon rebate, and the condition on which it would be made. It is alleged that, by means of said premises and terms of rebate to said purchasers, the accused, under the form and guise aforesaid, did attempt to monopolize to themselves the trade and commerce in said distillery products among the several states, in violation of law.

The third count is based upon the first section of the act. It alleges an agreement made by the aforesaid company with C. I. Hood, at Lowell, Mass., on the sale to him of 518.88 gallons of said company's products, made October 2, 1890, for a rebate upon the same terms and conditions as set forth in the second count, by which arrangement and promise it is charged that the accused "did attempt to execute and carry out the purpose and intent aforesaid to restrain the trade and commerce in said distillery products among the several states of the said United States, and especially between the state of Massachusetts and other states of the United States, against the peace," etc.

The fourth count is also founded upon section 1 of the act. It sets out a contract or agreement of the Distilling & Cattle Feeding Company with Kelly and Durkee, bearing date at Peoria, Ill., September 23, 1891, promising to pay the latter $4.27 as a rebate of 5 cents per gallon on 85.54 proof gallons of the company products purchased that day, upon the same terms and conditions as alleged in the second and third counts; and then sets forth the certificate of said Kelly and Durkee that they had since the date of the agreement purchased all their supply of such goods as are produced by the Distilling & Cattle Feeding Company, exclusively from one or more of the dealers or distributing agents of the company, of which a list is attached. This certificate bears date May 7, 1892, and it is charged that the purchaser's compliance with the terms and conditions on which the company promised to make or pay the 5 cents per gallon on rebate was a contract in restraint of trade and commerce, within the provisions of the statute.

In the consideration of this indictment it should be borne in mind that there are no common-law offenses against the United States; that the federal courts cannot resort to the common law as a source of criminal jurisdiction; that crimes and offenses, cognizable under the authority of the United States, are such, and only such, as are expressly designated by law; and that congress must define these crimes, fix their punishment, and confer the jurisdiction to try them. *U. S.* v. *Hudson*, 7 Cranch, 32; *U. S.* v. *Coolidge*, 1 Wheat. 415; *U. S.* v. *Britton*, 108 U. S. 199–206, 2 Sup. Ct. Rep. 531.

When congress, under and in the exercise of powers conferred by the constitution, adopts or creates common-law offenses, the courts may properly look to that body of jurisprudence for the true meaning and definition of such crimes, if they are not clearly defined in the act creating them. *U. S.* v. *Armstrong*, 2 Curt. 446; *U. S.* v. *Coppersmith*, 4 Fed. Rep. 198. The act of July 2, 1890, on which the present indictment is based, in declaring that contracts, combinations, and conspiracies in restraint of trade and commerce between the states and foreign countries were not only illegal, but should constitute criminal offenses against the United States, goes a step beyond the common law in this: that contracts in restraint of trade, while unlawful, were not misdemeanors or indictable at common law. It adopts the common law in making combinations and conspiracies in restraint of the designated trade and commerce criminal offenses, and creates a new crime, in making contracts in restraint of trade misdemeanors, and indictable as such. But the act does not undertake to define what constitutes a contract, combination, or conspiracy in restraint of trade, and recourse must therefore be had to the common law for the proper definition of these general terms, and to ascertain whether the acts charged come within the statute. We regard it as well settled by the authorities that an indictment, following simply the language of the act would be wholly insufficient, for the reason that the words of the statute do not of themselves fully, directly, and clearly set forth all the elements necessary to constitute the offense intended to be punished. *U. S.* v. *Cruikshank*, 92 U. S. 542; *U. S.* v. *Simmonds*, 96 U. S. 360; *U. S.* v. *Carll*, 105 U.

S. 611; *U. S.* v. *Britton*, 107 U. S. 655, 2 Sup. Ct. Rep. 512; *U. S.* v. *Trumbull*, 46 Fed. Rep. 755.

Under the principle established by those cases, the several counts of the present indictment must be tested, not by the general recitals and averments thereof, although in the words of the statutes, but by the specific acts or particular facts, which are alleged to have been actually done and committed by the accused. If the particular acts or facts charged do not, as a matter of law, constitute contracts, combinations, or conspiracies in restraint of trade and commerce among the several states, or a monopoly or attempt to monopolize any part of such trade or commerce, no amount of averments and allegations that the accused "engaged in a combination," or "made contracts in restraint" of such trade or commerce, or "monopolized" or "attempted to monopolize" the same, will avail to sustain the indictment. Whether the accused is charged with an offense is to be determined by the particular acts or facts set forth, and not by the conclusions of the pleader, although asserted in the words of the statute: "Every offense consists of certain acts done or omitted under certain circumstances, and in the indictment for the offense it is not sufficient to charge the accused generally with having commited the offense, but all the circumstances constituting the offense must be specially set forth." *U. S.* v. *Cruikshank*, 92 U. S. 542, 563.

Do the particular facts set forth in the indictment constitute violation of the statute? In construing and applying the provisions of the act to the specific offenses charged, it must be assumed that congress did not intend to make the enactment either retroactive or give it an *ex post facto* operation and effect. No criminality can therefore be ascribed to the acts of the accused in respect to their recited combination on February 11, 1890, in restraint of trade and commerce in distillery products by means of the Distilling & Cattle Feeding Company, a corporation organized by them on that day under the laws of Illinois, and its acquisition and control prior to the passage of the act of July 2, 1890, of 70 other distilleries, which enabled said company to manufacture and sell 70,000,000 gallons of said distillery products, said quantity being 75 per cent. of all the distillery products manufactured and sold in the United States between the date or dates of acquiring said distilleries and the finding of the indictment. It is not alleged that this acquisitisn and control of the 70 other distilleries by the accused or by the Distilling & Cattle Feeding Company, by means of which this large production was secured, was in any respect unlawful; nor is italleged, or even recited, that the parties from whom said 70 other distilleries were acquired, were by contract restrained from thereafter engaging in the distillery business, either generally or partially. From anything averred or recited to the contrary, it must be presumed, in this preceeding, that the defendants, or the Distilling & Cattle Feeding Company, in whose form and guise the accused is said to have acted, were in the rightful possession and control of the numerous distilleries employed by them in the manufacture of distilled products; and the quantity of such products, whether large or small, can in no way affect the right of disposition incident to lawful ownership. Congress may place restriction and limitations upon the right of corporations created and organized under its authority to acquire, use, and dispose of property. It may also impose such restrictions and limitations upon the citizen in respect to the exercise of a public privilege or franchise conferred by the United States. But congress certainly has not the power or authority under the commerce clause, or any other provision of the constitution, to limit and restrict the right of corporations created by the states, or the citizens of the states, in the acquisition, control, and disposition of property. Neither can congress regulate or prescribe the price or prices at which such property, or the products thereof, shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that congress has no jurisdiction over, and cannot make criminal, the aims, purposes, and intentions of persons in the acquisition and control of property, which the states of their residence or creation sanction and permit. It is not material that such property, or the products thereof, may become the subject of trade or commerce among the several states or with foreign nations. Commerce among the states, within the exclusive regulating power of congress, "consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities." *County of Mobile* v. *Kimball*, 102 U. S. 691-702; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 203, 5 Sup. Ct. Rep. 826. In the application of this comprehensive definition, it is settled by the decisions of the supreme court that such commerce includes, not only the actual transportation of commodities and persons between the states, but also the instrumentalities and processes of such transportation. That it includes all the negotiations and contracts which have for their object, or involve as an element thereof, such transmission or passage from one state to another. That such commerce begins, and the regulating power of congress attaches, when the commodity or thing traded in commences its transportation from the state of its production or *situs* to some other state or foreign country, and terminates when the transportation is completed, and the property has become a part of the general mass of the property in the state of its destination. When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state. At that time the power and regulating authority of the states ceases, and that of congress attaches and continues, until it has reached another state, and become mingled with the general mass of property in the latter state. That neither the production or manufacture or articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other states, nor the preparation for their transportation from the state where produced or manufactured, prior to the commencement of the actual transfer, or transmission thereof to another state, constitutes that interstate commerce which comes within the regulating power of congress; and, further, that after the termination of the transportation of commodities or articles of traffic from one state to another, and the mingling or merging thereof in the general mass of property in the state of destination, the sale, distribution, and consumption thereof in the latter state forms no part of interstate commerce. *Pensacola Tel. Co.* v. *Western Union Tel. Co.*, 96 U. S. 1; *Brown* v. *Houston*, 114 U. S. 622, 5 Sup. Ct. Rep. 1091; *Coe* v. *Errol*, 116 U. S. 517-520, 6 Sup. Ct. Rep. 475; *Robbins* v. *Taxing Dist.*, 120 U. S. 497, 7 Sup. Ct. Rep. 592; and *Kid* v. *Pearson*, 128 U. S. 1, 9 Sup. Ct. Rep. 6. In the latter case the supreme court pointed out the distinction between commerce and the subjects thereof. and held that the manufacture of distilled spirits, even though they were intended for export to other states, was not commerce, falling within the regulating powers of congress.

Stripping the indictment of its verbiage,—its general recitals and conclusions of law,—does either count thereof charge any real offense against the United States over which the district court of Massachusetts has jurisdiction? The specific offense charged in the first count is that the defendants, under the form and guise of the Distilling & Cattle Feeding Company, sold on October 3, 1890, to Mills and Gaffield, corpartners under the name of D. T. Mills & Co., a certain quantity of distilled products then in the state of Illinois; that, by reason of said Distilling & Cattle Feeding Company's controlling the manufacture and sale of 75 per cent. of all such products in the United States, they fixed the price at which said purchasers should and did sell said alcohol for use in Massachusetts, or for transportation into any other state, "and did compel said Mills and Gaffield, as copartners, to sell said alcohol at no less price than that fixed" by them. It is not alleged how said Boston purchasers were "compelled" to sell at the prices fixed by the defendants, nor how, or under what arrangement, the defendants fixed the price at which the alcohol should be sold in Massachusetts, or for transportation therefrom. Was it one of the provisions of the contract of sale and purchase, or was it by combination or conspiracy between the defendants and the Boston purchasers? The means described by which the defendants were enabled to fix the price at which the purchasers should sell the alcohol was certainly not a "contract, combination, or conspiracy in restraint of trade and commerce among the states." If they, by force or duress, "compelled" the purchasers to sell at a price fixed by them, such compulsion would not constitute either a contract, combination, or conspiracy in restraint of trade. It cannot be assumed, under the language employed in this count, that there was any "contract" between the defendants and Mills and Gaffield which by its terms and provisions restrained the latter in respect to the price at which they should or did sell the alcohol. The count certainly charges no "combination or conspiracy," within the meaning of the act, between the defendants and the Boston purchasers. The charge is too vague and general to show a "contract" in restraint of trade, such as the first section of the act contemplates and declares illegal. It cannot be aided by presumption or intendments. It is bad upon it face, and charges no offense committed in the state of Massachusetts of which the United States courts in that state could take jurisdiction.

The second count charges an attempt on the part of defendants to monopolize to themselves, under the form and guise of said Distilling & Cattle Feeding Company, the trade and commerce in distillery products among the several states, and between the state of Massachusetts and other states; the special acts on which this charge is based being that, on the purchase of certain quantities of alcohol by C. I. Hood, and Kelly & Durkee, (citizens and residents of Massachusetts,) in September, 1890, from certain distributing agents of the

Distilling & Cattle Feeding Company, the defendants, under the form and guise of said company, agreed and promised that if said purchasers would, for a certain designated period, (six months,) buy all their supply or supplies of distillery products exclusively from said company's distributing agents, (two of whom, as appears in the count, were located at Boston, Mass.,) and would not sell the alcohol or other distillery products so purchased at any lower prices than the list prices of such distributing agents, and would make a proper certificate of such facts, then the said Distilling & Cattle Feeding Company would make and pay to said purchasers a rebate of five cents per gallon on each gallon purchased by them. The third and fourth counts set out substantially the same arrangement and agreement as to the payment of a rebate of five cents per gallon upon the purchasers' compliance, during the period stated, with the aforesaid terms and conditions, and charge the same to have been contracts in restraint of trade and commerce among the states, within the purview of the statute. We may therefore consider those three counts together. Do the facts therein set forth constitute either an "attempt to monopolize" trade and commerce in distillery products among the states, or contracts in restraint of such trade? It is not very clear what congress meant by the second section of the act of July 2, 1890, in declaring it a misdemeanor to "monopolize", or "attempt to monopolize", any part of the trade or commerce among the states or with foreign nations. It is very certain that congress could not, and did not, by this enactment, attempt to prescribe limits to the acquisition, either by the private citizen or state corporation, of property which might become the subject of interstate commerce, or declare that, when the accumulation or control of property by legitimate means and lawful methods reach such magnitude or proportions as enabled the owner or owners to control the traffic therein, or any part thereof, among the states, a criminal offense was committed by such owner or owners. All persons, individually or in corporate organizations, carrying on business avocations and enterprises involving the purchase, sale, or exchange of articles, or the production and manufacture of commodities, which form the subjects of commerce, will, in a popular sense, monopolize both state and interstate traffic in such articles or commodities just in proportion as the owner's business is increased, enlarged and developed. But the magnitude of a party's business, production, or manufacture, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of such business, production, or manufacture, is not the monopoly, or attempt to monopolize, which the statute condemns.

A "monopoly," in the prohibited sense, involves the element of an exclusive privilege or grant which restrained others from the exercise of a right or liberty which they had before the monopoly was secured. In commercial law it is the abuse of free commerce by which one or more individuals have procured the advantage of selling alone or exclusively all of a particular kind of merchandise or commodity to the detriment of the public. As defined by BLACKSTONE (4 Bl. Comm., 159) and by Lord COKE (3 Co. Inst., 181) it is a grant from the sovereign power of the State by commission, letters patent, or otherwise to any person or corporation by which the exclusive right of buying, selling, making, working, or using anything is given. When this section of the act was under consideration in the Senate, distinguished members of its Judiciary Committee and lawyers of great ability explained what they understood the term "monopoly" to mean, one of them saying: "It is the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him." Another Senator defined the term in the language of Webster's Dictionary: "To engross or obtain, by any means, the exclusive right of, especially the right of trading, to any place or or with any country, or district; as to monopolize the India or Levant trade." It will be noticed that, in all the foregoing definitions of "monopoly", there is embraced two leading elements, viz.: an exclusive right or privilege on the one side, and a restriction or restraint on the other, which will operate to prevent the exercise of a right or liberty open to the public before the monopoly was secured. This being, as we think, the general meaning of the term, as employed in the second section of the statute, an "attempt to monopolize" any part of the trade or commerce among the states must be an attempt to secure or acquire an exclusive right in such trade or commerce by means which prevent or restrain others from engaging therein. It was certainly not a "monopoly", in the legal sense of the term, for the accused or the Distilling & Cattle Feeding Company to own 70 distilleries, and the products thereof, whether such products amounted to the whole or a large part of what was produced in the country. Their ownership and control of such products, as subjects of trade and commerce, is not what the statute condemns, but the monopoly or attempt to monopolize the interstate trade or commerne therein. In this acquisition and operation of the 70 distilleries, which enabled the accused or said Distilling & Cattle Feeding Company to manufacture and control the sale of 75 per cent. of the distillery products of the country, does not appear, or is it alleged, that the persons from whom said distilleries were acquired were placed under any restraint, by contract or otherwise, which prevented them from continuing or reengaging in such business. All other persons who chose to engage therein were at liberty to do so. The effort to control the production and manufacture of distillery products, by the enlargement and extension of business, was not an attempt to monopolize trade and commerce in such products within the meaning of the statute, and may therefore be left out of further consideration.

Was the arrangement with the Boston purchasers, as to making them a rebate upon the conditions stated, an attempt to monopolize any part of the trade and commerce among the states in distillery product? It is not alleged, nor is it to be inferred from anything that is set forth, that said purchasers bound themselves, or entered into any contractual obligations or understanding, to buy their distillery supplies exclusively from the distributing agents of said Distilling & Cattle Feeding Company. They were left at perfect liberty to purchase when, where, or from whom they pleased. No contractual or other restraint was placed upon them. Upon certain conditions, which it was entirely optional with them to comply with or disregard, a rebate was promised by the seller. Such an arrangement does not amount to a contract to purchase exclusively from said distilling company or its distributing agents. But, suppose it did, there was nothing in such an agreement unlawful or in contravention of the statute. The promise of a rebate, as an inducement for exclusive trading, certainly does not constitute an "attempt to monopolize", when the purchaser is left at liberty to buy where he pleases, and when all other sellers of the article are left unrestrained in offering the same, or greater, inducements. As to the remaining condition upon which the rebate was to be payable, the same observation may be made. The purchasers were placed under no contractual or other restraint in respect to the price at which they should sell. They were simply offered a rebate, as an inducement not to undersell the vendor's distributing agents, two of whom were located at Boston, Mass. The arrangement relied on, considered either in detail or as a whole, involved no "attempt to monopolize any part of the trade or commerce among the states." The rebate promised, upon condition of exclusive purchases and not underselling the vendor's distributing agents, was a legitimate method of inducing trade; but the means thus employed in no way operated to prevent or restrain others from offering the same, or greater, inducements. The condition as to not selling at lower prices than those of the distributing agents may have had a tendency to maintain prices, but that would not have been an attempt to monopolize trade. The inducements offered for the exclusive trade, and to sell at no lower prices than the price list of the distributing agents, was not prejudicial to the public. It was in no way contrary to public policy, or an unlawful restraint of trade, as will be seen from the authorities hereinafter referred to. But, aside from this, it is not shown that said arrangement necessarily involved or related to interstate traffic. It is not alleged that Webb & Harrison, the distributing agents, from whom Hood and Kelly and Durkee made their purchases of alcohol, were located or made such sales in some other state than Massachusetts; nor that the alcohol itself was beyond the limits of that state when purchased. Neither is it shown that the exclusive purchases thereafter to be made, as one of the conditions on which the rebate was to be paid, could not have been made in the state of Massachusetts, it appearing from the face of the count that two of such distributing agents were located at Boston, in said state. Without dwelling further upon its consideration, we are clearly of the opinion that this second count fails to charge any offense against the petitioner.

What has been already said applies largely to the third and fourth counts. The matter of the promised rebate upon the same conditions as set forth in the second count, which is charged to have been a contract in restraint of trade and commerce among the states, and between the state of Massachusetts and other states, does not constitute any offense against the United States, or in any way contravene the first section of the act of July 2, 1890, because there was actually no contract which bound, or attempted to bind, the Massachusetts purchasers of alcohol as to where or from whom they would make further purchases during the period stated, nor as to the price or prices at which they should sell. They were simply offered an inducement in respect to those matters, which they were at perfect liberty to comply with or decline. They were not restrained by any contractual obligation during the stipulated period. The agreement was wholly unilateral during the period. Upon compliance with the conditions as alleged in the fourth count, they were entitled to the rebate; but such compliance had no retroactive operation to create a valid and subsisting contract between the parties prior thereto, or during the period intervening between the date of the promise and the full compliance with the conditions on which the rebate was to be paid. During that period there was between the parties no contract in restraint of trade. But suppose the arrangement could by any possibility be construed into a contract between the parties from the date of the promise, or during the stipulated period, it could not be held to be a contract in restraint of trade. It is not deemed necessary to review the authorities upon the subject of contracts in restraint of trade, nor would it be at all profitable. It is well settled that contracts in general restraint of trade are contrary to public policy, and therefore unlawful. The arrangement under consideration cannot possibly be considered as one in general restraint of trade. Where the restraint is partial, either as to time or place, its validity is to be determined by its reasonableness and the existence of a consideration to support it. The question of its reasonableness depends on the consideration whether it is more injurious to the public than is required to afford a fair protection to the party in whose favor it is secured. No precise boundary can be laid down as to when, and under what circumstances, the restraint would be reasonable, and when it would be excessive. *Navigation Co. v. Winsor*, 20 Wall. 64–68; *Beal v. Chase*, 31 Mich. 490; *Ward v. Byrne*, 5 Mees. & W. 549; *Horner v. Graves*, 7 Bing. 735; *Mallan v. May*, 11 Mees. & W. 667; *Whittaker v. Howe*, 3 Beav. 383; *Hodge v. Sloan*, 107 N. Y. 244, 17 N. E. Rep. 335. In the present case, the arrangement treated as a contract was founded upon a valid consideration, and only secured to the vendors a reasonable protection in their business. It was not an unlawful contract in restraint of trade. The authorities fully support this conclusion. In addition to those referred to above, we cite the following: *Brown v. Rounsavell*, 78 Ill. 589; *Fowle v. Park*, 131 U. S. 88, 9 Sup. Ct. Rep. 658; *Chicago, etc., R. Co. v. Pullman South. Car Co.*, 139 U. S. 79, 11 Sup. Ct. Rep. 490; *Mogul S. S. Co. v. McGregor*, (1892) App. Cas. pt. 1 p. 25, (decided by the house of lords in December, 1891). In this latter case there was a combination or association of ship owners who, being engaged in trade with China, with a view of obtaining a monopoly of the homeward tea trade and excluding the plaintiffs from competing with them for the same, and thereby keep up freight, offered to rebate or repay every sixth month, to such merchants and shippers in China as should have shipped their tea exclusively in vessels of the association 5 per cent. on all freight paid by them. The plaintiffs, as rival and competing ship owners, were thereby excluded from this business, and sued for damages, and the question (almost identical with that under consideration) was presented whether the combination and arrangement adopted by the association to secure the exclusive transportation of tea trade was in any way unlawful. It was first passed upon, and held to be free from objection, by Lord COLERIDGE. 21 Q. B. Div. 554, 4 Ry. & Corp. Law J. 611. His decision was sustained on appeal, (23 Q. B. Div. 598, 7 Ry. & Corp. Law J. 223), and was finally affirmed by the house of lords. It would be highly instructive to quote at length from the opinions delivered in the house of lords, if the limits of this opinion permitted. The reasons and conclusions there reached fully sustain our conclusions in the present case. * * *

The conclusion of the court is that the petitioner, Lewis H. Greene, should be discharged, and it is accordingly so ordered and adjudged.

135-1

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No. 675. Of October Term, 1894.

Supreme Court of the United States.

156-1

IN EQUITY.

Record No. 15,548.

The United States of America, Complainant below and Appellant,

vs.

E. C. Knight Company *et al.*, Respondents below and Appellees.

APPELLEES' BRIEF.

JOHN G. JOHNSON,
JOHN E. PARSONS,
For Appellees.

Allen, Lane & Scott, Prs., Phila.

IN THE
SUPREME COURT OF THE UNITED STATES.

IN EQUITY

The United States of America, Complainant below and Appellant, vs. *E. C. Knight Company* et al., *Defendants below and Appellees.*	Record No. 15,548. October Term, 1894. No. 675.

APPELLEES' BRIEF.

We will submit what we have to say by way of discussion of this case under six heads:—

I. The offense charged in the bill.

II. The extent of establishment of the offense as charged.

III. The wording of the statute known as "the Sherman "Act."

IV. The meaning of the Sherman Act.

V. No offense has been established within the meaning of the Sherman Act.

VI. No case has been made out, entitling complainant to equitable relief by way of an injunction, even though the statute has been offended against.

I. THE OFFENSE CHARGED IN THE BILL.

The charge is thus summed up:—

1. The American Sugar Refining Company is a corporation of New Jersey, authorized to purchase, refine and sell sugar in certain States.

2. Four corporations of Pennsylvania, viz., the Franklin

Sugar Refinery, E. C. Knight Company, Spreckels Sugar Refinery, and Delaware Sugar House, were authorized by their charters to purchase, refine and sell sugars, and were located in Philadelphia.

3. Said four companies, prior to March, 1892, manufactured, independently of the American Sugar Refining Company, some thirty-three per centum of the total sugar refined in the United States. They competed with the American Sugar Refining Company and sold their products through the United States and in the various States thereof.

4. Prior to March, 1892, the American Sugar Refining Company had obtained control of all the refineries in the United States, saving said four and the Revere Sugar Refining Company of Boston, which latter corporation manufactured some two per centum of all the refined sugar made in the United States.

5. The American Sugar Refining Company formed a scheme to purchase all the refineries, the details of which are set forth in the bill. (Page 6.)

6. In pursuance of this unlawful scheme, the said American Sugar Refining Company bought from certain defendants, named in the bill respectively, all the stock of each of said refining companies, under an agreement by which it paid therefor in its own stock, one-half common and one-half preferred.

7. These contracts were made for the purpose of enabling the American Sugar Refining Company to control the whole market for sugar. (See pages 8 and 9 of the bill.)

8. They were made in pursuance of a scheme to limit the production and to increase the price of refined sugar. The details of this charge are to be found on page 9 of the bill.

9. They were made in pursuance of a combination and conspiracy by all the parties, to effect the illegal object. (Page 9 of the bill.)

The bill prays :—

(*a.*) Declaration that said contracts of sale of shares of stock are illegal.

(*b.*) Declaration that the respective parties to said sale shall be ordered to surrender the shares respectively received by them.

(*c.*) An injunction against any further performance of the terms and conditions of said agreement.

(*d.*) An injunction restraining any further violation of the Act of 1890.

II. THE EXTENT OF ESTABLISHMENT OF THE OFFENSE AS CHARGED.

1. There was no *joint* scheme. The owners of the shares of the different companies sold, entirely independently of each other, and without any concert. There was no concert of action, saving that in the case of each company, as all its shares were meant to be purchased, all the owners of its stock joined.

2. Whilst the American Sugar Refining Company desired to obtain the shares of all of the four companies, it acted independently in its purchases, and bought those of one, without any condition that the purchase would be ineffectual if the shares of other companies were not secured.

3. There was no contract of any sort or kind, saving to buy, and to sell, shares. There was no contract that the vendors should not engage in manufacture; nor that other persons should be interfered with in manufacture; nor that production should be restrained, or prices enhanced.

4. The vendors of the shares were shown to have sold in pursuance of a *bona fide* desire to realize into cash, or into shares of stock which were marketable and could be converted into cash, their interests in large manufacturing enterprises that, in many cases, required labor and attention which were onerous. Large sales, after acquisition thereof, of the shares of the American Sugar Refining Company, were made by the vendors of the shares of the refining companies.

5. There was no dismantling of any of the refineries. Those in Philadelphia have been run as fully as before. For economical reasons the Delaware Sugar House is being run in conjunction with the Spreckels Sugar Refinery. For the same reason the E. C. Knight Refinery is being run in

connection with the Franklin Sugar Refinery. More sugar has been made since the sale, in Philadelphia, than before.

6. Since the sale each corporation has been running under its own organization, and has fixed the price of sugar manufactured by it.

7. There was no proof of any regulation affecting the trade in sugar between the States. There has been a slight enhancement of price beyond that which, within a few months prior to the sale, was commanded, but the price is considerably lower than that which during several years preceding the few months immediately antecedent to said sale, prevailed.

8. Outside of the refineries owned, or indirectly controlled, by the American Sugar Refining Company, ten per centum of the sugar sold in the United States is refined. Sugar received from foreign countries is also sold here. Sugar is manufactured in Louisiana to a large extent, which is sold independently of the American Sugar Refining Company.

III. THE WORDING OF THE STATUTE KNOWN AS THE "SHERMAN ACT."

By its title it forbids only "unlawful restraints of trade" and "monopolies."

"Restraints of trade" between the States, and with foreign nations, by means of contracts, combinations and conspiracies, are made a misdemeanor by the first section.

"Monopoly," or attempt at monopoly, of trade between the States, and with foreign nations, is made a misdemeanor by the second section.

By the fourth section, jurisdiction is given to the Circuit Courts of the United States.

By the seventh section, redress of individual injuries, by common-law actions, is given.

IV. THE MEANING OF THE SHERMAN ACT.

The courts may be pardoned if they fail to understand the meaning of a statute of which its authors were ignorant. Mr.

Culberson, who introduced the bill in the House, said (Congressional Record, vol. XXI., part 5, page 4089):—

> This legislation occupies a new field, and as the Constitution has wisely left with the several States of this Union the right to local self-government, the legislative field of Congress with reference to questions of this character, except in a few instances where power has been granted to the Federal or General Government, is extremely limited. * * * Now just what contracts, what combinations in the form of trusts or what conspiracies will be in restraint of trade or commerce mentioned in the bill, will not be known until the courts have construed and interpreted this provision. * * * I wish to be understood, Mr. Speaker, as having stated in the outset that I do not know, nor can any man know, just what contracts will be embraced by the first section of the bill until the courts determine.

A. There must be a contract, combination or conspiracy to restrain or to monopolize trade among the States or with foreign nations by unreasonably and directly regulating, restraining or preventing the parties thereto, or third persons, from carrying on such trade or commerce.

B. Contracts, combinations or conspiracies to restrain the manufacture of goods in any State, or to affect the price of the same before they enter into trade or commerce, though they may, by virtue of diminished manufacture or enhanced price, indirectly affect trade or commerce, are not within the statute.

A. There must be a contract, combination or conspiracy to restrain or to monopolize trade among the States or with foreign nations by unreasonably and directly regulating, restraining or preventing the parties thereto, or third persons, from carrying on such trade or commerce.

No statute of the United States before 1890 made punishable as a misdemeanor the offenses defined in the Sherman Act. The Act itself contains no definition of the words used. In a search for the meaning of Congress, therefore, we must examine the cases which antecedently defined what was meant by the words "in restraint of trade" and "monopoly." Where a penal statute uses terms which it does not itself define, and those terms are familiar terms, which have been the subject of previous judicial interpretation, it cannot be presumed that they are used in any other or broader sense than that previously given to them by the courts.

All restraints of trade and all monopolizations are not illegal. It is well settled that restraints of trade within certain limits of object, time and place, are legal. " Restraint of " trade " has a well-defined meaning, viz., unreasonable interference with contracting, or combining, parties, or with third persons, in their power to trade.

Necessarily involved in the meaning is the idea of *a restriction* on some party, interfering with trade.

So with " monopoly." A man may acquire as much property as he pleases for himself, so long as he does not illegally interfere with others. A corporation, invested by its charter with a like power to acquire, may use it as though it were an individual.

Courts do not interfere with a man's rights to acquire what he pleases, and to do what he pleases, subject to the police power of the State and to the police laws, and also subject to his duty so to use it as not, by his use, to injure the property of others. This right, however, does not include one to exclude others from dealing, in like way, with their own property. Contracts or combinations, therefore, having as their end such interference, are illegal.

One man may buy up a manufactory of another and thereafter may use the same in manufacturing or not, as he shall please; but he may not agree with another, who retains his property, that neither shall manufacture, or that, if he does, he shall do so only at a certain price and under certain restrictions.

The cases referred to in the brief for the United States are those in which the courts of the States have held that combinations of the shares of stock of various corporations under the control of persons who were not stockholders were illegal, because not authorized by the law of the State, and because of the illegal control of the corporations, by combinations of persons not really owning shares.

What is the contract or combination complained of in this case? Nothing was done which bound the vendors not to manufacture; nor was there any attempt to interfere with other persons in building new manufactories or in manufacturing. The contract was simply one for the purchase and sale of stock. It was a sale by a person who, as an incident to his ownership, had a right to dispose of what belonged to him. It was a purchase by a corporation which, by the law of New Jersey, had a right to acquire either refineries, or shares of stock of refineries.

In Oregon Steam Navigation Co. *vs.* Windsor, 20 Wallace, 64, Mr. Justice Bradley said:—

> It is a well-settled rule of law that an agreement in general restraint of trade is illegal and void; but an agreement which operates merely in partial restraint of trade is good, provided it be not unreasonable, and there be a consideration to support it. In order that it may not be unreasonable, the restraint imposed must not be larger than is required for the necessary protection of the party with whom the contract is made. * * * There are two principal grounds upon which the doctrine is founded that a contract in restraint of trade is void as against public policy: One is the injury to the public by being deprived of the restricted party's industry; the other is the injury to the party himself, by being precluded from pursuing his occupation, and thus being prevented from supporting himself and his family. It is evident that both these evils occur when the contract is general not to pursue one's trade at all, or not to pursue it in the entire realm or country; the country suffers the loss in both cases, and the party is deprived of his occupation, or obliged to expatriate himself in order to follow it. A contract that is open to such grave objection is clearly against public policy. But if neither of these evils ensue, and if the contract is founded upon a valid consideration and a reasonable ground of benefit to the other party, it is free from objection, and may be enforced.

Concerning the meaning of "monopoly," Mr. Justice Field, in Butcher's Union Company *vs.* Crescent City Company, 111 U. S., 755, said:—

> A monopoly is defined "to be an instruction or allowance from the "sovereign power of the State by grant, commission or otherwise, to "any person or corporation, for the sole buying, selling, making, work-"ing or using of anything, whereby any person or persons, bodies, "politic or corporate, are sought to be restrained of any freedom or "liberty they had before, or hindered in their lawful trade." All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain persons from getting an honest livelihood, and put it in the power of the grantees to enhance the price of commodities. They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment.

Though this definition refers to a monopoly by legislative grant, it applies equally well to a monopoly by agreement, the objection to both resting on the same policy of the law and the same reasoning.

Both in the case of " restraint of trade," and of " monopoly," the illegality consists, not in the accumulation and employment of great wealth, or in the acquisition and use of great control of trade by individuals, partnerships or corporations (although this may cause disturbance of trade or prices, and, indirectly, affect the power of others to profitably carry on business), but in the direct restraint, either of the combining persons themselves, or of other persons outside of the combination, from engaging in a particular trade, or from buying and selling particular articles. It is not the acquisition of wealth or power which is prohibited, but the unreasonable prevention of the individual from free trading in a particular business, or dealing in a particular commodity.

To come within the Act of 1890, therefore, the combination must have for its purpose or result the direct restraint of persons, either members of the combination or outsiders, from carrying on commerce between the several States, or with foreign countries. We may illustrate this :—

A steamship company owning ships trading between Philadelphia and Boston may buy all the ships belonging to a rival company trading between the same points. The effect of this may be to give, for the time being, a monopoly of the carrying trade, in ships, between these ports. The arrangement will be legal, unless an agreement is added restraining the vendor of the ships from buying other ships, or from carrying on the business.

The Act of 1890 has been before the United States Courts in several cases. In three of these the acts alleged to be illegal have been restrained. In United States *vs.* Jellico Coal Company, 46 Fed. Rep., 432, this restraint was granted because of the contract interfering directly with the trade between the States. Key, J., said :—

> In making the agreement the transportation of the coal from Kentucky to Nashville was a necessary incident to, and element in, the ar-

rangement, and its execution would have been impossible without it. The instrumentality of transportation did not belong to, nor was it controlled by, them, but it was used by them and paid by them for services rendered. The contract provided for the sale of coal in Kentucky and its shipment to Nashville, Tenn., to dealers there, for its retail to consumers. It was to all intents and purposes a traffic, trade, commerce between States.

In Blindell *vs.* Hagan, 54 Fed. Rep., 40, relief was granted (Billings, J.) on the ground that the facts disclosed a combination to prevent the owners of a steamship used in carrying trade between New Orleans and Liverpool from obtaining a crew to navigate their vessel, and to restrain persons from shipping as such crew.

In the case of United States *vs.* Workingmen's Amalgamated Council, 54 Fed. Rep., 994, relief was granted on the ground that the combination was to prevent the employment, or furnishing, of labor, in the business of transportation of goods and merchandise in the course of transit through the city of New Orleans from one State to another. The late Billings, J., said:—

> The combination setting out to secure and compel the employment of none but union men in a given business, as a means to effect this compulsion finally enforced a discontinuance of labor in all kinds of business, including the business of transportation of goods and merchandise which were in transit through the city of New Orleans from State to State and to and from foreign countries. When the case is thus stated, and it must be so stated to embody the facts here proven, I do not think there can be any question but that the combination of the defendants was in restraint of commerce.

In seven cases in which relief was refused under the Act, the element of direct and unreasonable restraint of interstate commerce was absent, although in some cases all the elements which are relied upon in the present as ground of relief existed.

In the case of United States *vs.* Greenhut, 50 Fed. Rep, 469, the indictment set forth that the Distilling and Cattle Feeding Company, an Illinois corporation, had purchased or leased seventy-eight competing distilleries and operated such distilleries and sold the product, part of it in the district of Massachusetts, at prices fixed by it—the whole being seventy-five per centum of all the distilled spirits manufactured and sold in the United States—and that said acts were done with the intent to monopolize to the company the manufacture and sale of distilled spirits in Massachusetts and among the several States, to increase prices, and to prevent competition.

The indictment was quashed, the court, Nelson, J., saying:—

> An indictment framed under this section should contain a distinct averment in the words of the statute or in equivalent language that by means of the acts charged the defendants had monopolized, or had combined or conspired to monopolize, trade and commerce among the several States or with foreign nations. This indictment contains no such averment. It does not charge that the defendants entered into any unlawful combination or conspiracy, nor does it contain any averment that they had monopolized trade or commerce among the several States or with foreign nations. It avers merely that by means of the acts alleged they had monopolized the manufacture and sale of distilled spirits, without stating that in so doing they had monopolized trade and commerce in distilled spirits among the several States or with foreign nations. It is true that the indictment charges that the defendants have done certain things with intent to monopolize the traffic in distilled spirits among the several States, and that they have increased the usual prices at which distilled liquors were sold in Massachusetts, and have prevented and counteracted the effect of free competition in such traffic in Massachusetts, but none of these things are singly made offenses by the statute. The indictment in this particular is clearly insufficient according to the elementary rules of criminal pleading, and charges no offense within the letter or spirit of the second section of the statute.

In the case of *In re* Corning, 51 Fed. Rep., 205, defendants were indicted in Massachusetts under an indictment under the Act of 1890. The first count alleged a combination to restrain commerce in Massachusetts and between that State and other States of the Union in distillers' products, of which it charged that defendants produced seventy-five per centum of the entire production in the United States. It averred that defendants sold in Boston, alcohol made in Peoria, Ill., intended to be transported to, and sold in, Boston, and that with intent to restrain the trade they fixed the price at which the purchaser should sell the same in Massachusetts, or for transportation to other States, and compelled the purchaser to sell at no less price than that fixed by them, and that by means thereof they controlled the amount of said products sold in said district, or for transportation to other States, counteracted the effect of free competition, and increased the price at which the products were sold in said State, and for transportation to other States, and restrained the commerce between the State of Massachusetts and other States of the Union.

The second count charged defendants with combining and monopolizing the trade in distillery products, and, with intent to so monopolize, with having purchased seventy distilleries, making seventy-five per centum of the product, with the intent of controlling the trade and price of said product in Massachusetts, and between the several States, and that, with such purpose, they had sold to one Hood, alcohol, under a promise that if, for a certain time, he should purchase exclusively from them his supplies of such goods, and should not sell such goods at lower prices than their list price, they would return to him five cents per proof gallon.

The fourth count alleged, that with the purpose of restraining trade and commerce between the several States, defendants entered into a contract with one K. to repay to him five cents per gallon of defendants' product, purchased by him, provided he should buy exclusively from defendants, or their agents, that kind of goods.

Application being made in Ohio for a warrant to remove defendants to Massachusetts for trial on this indictment, the court (Ricks, J.) denied the motion and discharged the prisoners. He said:—

> Assuming an unlawful intent and purpose of a combination to restrain trade and monopolize traffic in these distillery products, as charged in the indictment, do the acts set forth constitute such restraint and monopoly? In what respect did the sales made as charged restrain trade or monopolize the traffic in distillery products? These terms, as used in the Act of Congress under consideration, are well defined at common law, and must be considered with reference to such established meaning. The indictment was prepared with great care by the District Attorney of Massachusetts, and it is safe to assume that he has charged therein all the acts which he believed it possible to prove on the trial. Assuming this to be true, the indictment is significant in what it omits to charge in the respects above referred to. It is not averred that when defendants purchased their seventy distilleries they obligated the vendors not to build other distilleries or not to continue in the distillery business in the future. It

> is not averred that defendants attempted in any way to bind the vendors to withhold their capital or skill or experience in the business from the public in the future. There is no averment that the defendants in any manner or at any time attempted to control the business of the remaining one-fourth of the distilleries in the United States, or in any way attempted to limit their output, or by agreement with them control the price at which their products should be sold, or in any degree restrain their trade or limit the territory over which their trade should extend. * * * The acts charged are common and frequent to many branches of manufacture and trade, and if the defendants are guilty in the manner of making sales of their products as set forth in the indictment the Act is more sweeping in its provisions than ever contemplated by Congress, as manifestly appears from the debates in the Senate when the Act was before it for consideration. From those debates it is evident that Congress did not intend to limit the amount of capital a citizen should invest in any line of business, or restrain his energy or enterprise in acquiring for himself all the trade possible in such business, provided in doing so he did not by illegal contracts or devices restrain others from pursuing the same business, or deprive the public from enjoying the advantages of the free use of capital, skill and experience of competitors.

In the case of *In re* Terrell, 51 Fed. Rep., 213, the same question, under the same indictment, came before the Circuit Court of New York. The petitioner was discharged, the court (Lacombe, J.) saying that he entirely concurred in the opinion delivered by Judge Ricks in the case of *In re* Corning, already cited, and adding:—

> It is not the actual restraint of trade (if such be restraint of trade) that is made illegal by the statute, but the making of a contract in restraint of trade, of a contract which restrains or is intended to restrain trade. It is difficult to understand on what principle it can be contended that trade is restrained by a contract when no contract exists. That when the trade in distillery products which Kelly & Durkee carried on between September 16th, 1891, and May 7th, 1892, was restrained (if restrained it were) there was no contract in existence is conclusively admitted on the face of the indictment itself, which charges the statutory offense, to wit, the making of a contract, &c., as committed on May 7th, 1892.

In the case of *In re* Green, 52 Fed. Rep., 104, a petition was presented to the Circuit Court for the Southern District of Ohio for a writ of *habeas corpus* to release a prisoner, who was held under a warrant awaiting an order for his removal to Massachusetts to answer an indictment there. The indictment was substantially the same which had come before the court in the case of United States *vs.* Greenhut, already cited. The court discharged the prisoner, Mr. Justice Jackson (then Circuit Judge) saying (page 111):—

> But the Act does not undertake to define what constitutes a contract, combination or conspiracy in restraint of trade, and recourse must therefore be had to the common law for the proper definition of these general terms and to ascertain whether the acts charged come within the statute. * * * Congress may place restriction and limitations on the right of corporations created and organized under its authority to acquire, use and dispose of property: it may also impose such restrictions and limitations on the citizen in respect to the exercise of a public privilege or franchise conferred by the United States; but Congress certainly has not the power or authority under the commerce clause or any other provision of the Constitution to limit and restrict the right of corporations created by the States or the citizens of the States in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property or the products thereof shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over and cannot make criminal the aims, purposes and intentions of persons in the acquisition and control of property which the States of their residence or creation sanction and permit. * * * (Page 115.) It is not very clear what Congress meant by the second section of the Act of July 2d, 1890, in declaring it a misdemeanor to monopolize or attempt to monopolize any part of the trade or commerce among the States or with foreign nations. It is very certain that Congress could not and did not by this enactment attempt to prescribe limits to the acquisition, either by the private citizen or State corporation, of property which might become the subject of interstate commerce, or declare that when the accumulation or control of property by legitimate means and lawful methods reached such magnitude or proportions as enabled the owner or owners to control the traffic therein, or any part thereof, among the States, a criminal offense was committed by such owner or owners. All persons, individually, or in corporate organizations, carrying on business avocations and enterprises involving the purchase, sale or exchange of articles, or the production and manufacture of commodities which form the subjects of commerce, will in a popular sense monopolize both State and interstate traffic in such articles or commodities just in proportion as the owner's business is increased, enlarged and developed; but the magnitude of a party's business, production or manufacture, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of such business, production, or manufacture, is not the monopoly or attempt to monopolize which the statute condemns. A monopoly in the prohibited sense involves the element of an exclusive privilege or grant which restrains others from

> the exercise of a right or liberty which they had before the monopoly was secured. In commercial law it is the abuse of free commerce by which one or more individuals have procured the advantage of selling alone or exclusively all of a particular kind of merchandise or commodity to the detriment of the public.

After quoting various definitions of "monopoly," the court added:—

> It will be noticed that in all the foregoing definitions of "monopoly" there is embraced two leading elements, namely, an exclusive right or privilege on one side and a restriction or restraint on the other which will operate to prevent the exercise of a right or liberty open to the public before the monopoly was secured. This being, as we think, the general meaning of the term as employed in the second section of the statute, an attempt to monopolize any part of the trade or commerce among the States must be an attempt to secure or acquire an exclusive right in such trade or commerce by means which prevent or restrain others from engaging therein. It was certainly not a monopoly in the legal sense of the term for the accused or the Distilling and Cattle Feeding Company to own seventy distilleries and the proceeds thereof, whether such products amounted to the whole or a large part of what was produced in the country. Their ownership and control of such products as subjects of trade and commerce is not what the statute condemns, but the monopoly or attempt to monopolize the interstate trade or commerce therein. In this acquisition and operation of the seventy distilleries, which enabled the accused or said Distilling and Cattle Feeding Company to manufacture and control the sale of seventy-five per cent. of the distillery products of the country, it does not appear, nor is it alleged, that the persons from whom said distilleries were acquired were placed under any restraint by contract or otherwise which prevented them from continuing or re-engaging in such business. All other persons who chose to engage therein were at liberty to do so. The effort to control the production and manufacture of distillery products by the enlargement and extension of business was not an attempt to monopolize trade and commerce in such products within the meaning of the statute, and may therefore be left out of further consideration.

In United States *vs.* Nelson, 52 Fed. Rep., 646, the defendants were indicted under an indictment which charged in substance that they were dealers in lumber in the United States and had agreed together to raise the price of lumber fifty cents per thousand feet in advance of the market price of fine lumber in the States of Wisconsin, Minnesota, Iowa, Illinois and Missouri, and that they did so raise the price by mutual agreement. The court sustained the demurrer to the indictment on the ground that it was not charged that there were either fraudulent or coercive means resorted to for the purpose of restraining other dealers from exercising their own judgment as to prices, the court (Nelson, J.) saying:—

> The Federal Courts by this Act are given jurisdiction to apply remedies, in cases where interstate commerce is injuriously affected by combinations and contracts, which the State Courts have formerly applied to protect local interests. In order to administer the law the court must determine what is an unreasonable and unlawful restraint of trade or commerce by contracts, trusts and conspiracies, and whether a contract is injurious to the public.

In the case of United States *vs.* Trans-Missouri Freight Association, 53 Fed. Rep., 440, the court dismissed the bill filed by the United States to restrain certain competing railroad companies from carrying into effect an agreement to maintain rates and prevent discrimination. Riner, J., said (page 451):—

> I think the cases are uniform to the effect that where the contract is publicly oppressive and the restrictions are broader than are necessary for the legitimate protection of the other party to be benefited by the contract then the contract is unreasonable, a contract in restraint of trade and therefore void; otherwise not. Undoubtedly all contracts which have a direct tendency to prevent healthy competition are detrimental to the public, and therefore to be condemned, but when contracts go to the extent only of preventing healthy competition, and yet at the same time furnish the public with adequate facilities at fixed and reasonable prices, and are made only for the purpose of averting personal ruin, the contract is lawful. * * * It is further urged by counsel for the Government that this association unavoidably tends to a monopolization of trade and commerce, and for that reason is in violation of the second section of the Act of July 2d, 1890. A monopoly is defined by Mr. Justice Story to be an exclusive right granted to a few of something which was before of common right, and by Lord Coke to be an institution by the king by his grant, commission or otherwise to any persons or corporations of or for the sole buying, selling, making, working or using of everything whereby any persons or corporations are sought to be restrained of any freedom or liberty they had before or hindered in their lawful trade. While it is undoubtedly true that these railroad companies perform *quasi* public functions, and for that reason owe certain duties to the public, yet after a careful examination of this contract I must confess that I have been unable to discover in it a single element of a monopoly, especially as defined at common law. While it is true that the public are entitled to adequate facilities, and to just and reasonable rates at the hands of these corporations, they are entitled to just that and no more, and the allegation of the answer is that this was the very purpose of the contract.

In the case of Dueber Watch Case Company *vs.* Howard Watch Company, 55 Fed. Rep., 851, an action at law was brought by the plaintiff against defendant, alleging that the defendant, which was engaged in selling watches through the United States and Canada, notified all watch dealers, including some of plaintiff's customers, that it would not thereafter sell any goods manufactured by it to any person, firm, association or corporation which might thereafter buy or sell any goods manufactured by the plaintiff; that the defendant had also made an agreement to maintain an arbitrary price for its goods for the purpose of compelling plaintiff to join with it in maintaining certain prices; and that the object of its acts was to establish a monopoly in watch cases, and to crush competition and to drive plaintiff from the business unless he joined in the conspiracy. The court (Coxe, J.) sustained the demurrer to the declaration, saying (page 853):—

> The first question then is, does it constitute a violation of the statute for two or more dealers to fix an arbitrary price for their goods? No authority has gone to the extent of holding that such a transaction, in the absence of other facts, is illegal. The second question is, is it an illegal act, within the provisions of the law in question, for two or more traders to agree among themselves that they will not deal with those who prefer to purchase the goods of another designated trader in the same business? Many perfectly legitimate reasons might be suggested for such an agreement. It is not a combination to monopolize; at least there is no statement of facts tending to show that it produced a monopoly in the present case. Indeed, it would seem that it must have had a contrary effect. There was surely nothing to prevent the plaintiff from supplying its customers with those things which the defendant declined to sell them, and thus enlarge its trade and stimulate competition. The plaintiff was perfectly free to engage in every branch of the watchmaking business. So were all others.

In the case of United States *vs.* Trans-Missouri Freight Association, 58 Fed. Rep., page 58, which was a hearing in the Circuit Court of Appeals, of an appeal from the decision of the Circuit Court, in a suit between the same parties, already cited, the court dismissed the appeal, Sanborn, J., after a most elaborate examination and discussion of all the authorities on the question of the policy of the law, saying (page 72):—

From a review of these and other authorities it clearly appears that when the Anti-trust Act was passed the rule had become firmly established in the jurisprudence of England and the United States that the validity of contracts restricting competition was to be determined by the reasonableness of the restriction. If the main purpose or natural and inevitable effect of a contract was to suppress competition or create a monopoly it was illegal. If a contractor imposed a restriction that was unreasonable, injurious to the public interests, or a restriction that was greater than the interest of the party in whose favor it was imposed demanded, it was illegal; but contracts made for a lawful purpose which were not unreasonably injurious to the public welfare, and which imposed no heavier restraint on trade than the interests of the favored party required, had been uniformly sustained, notwithstanding their tendency to some extent to check competition. The public welfare was first considered, and the reasonableness of the restriction determined under these rules in the light of all the facts and circumstances of each particular case.

It is to be observed that while Shiras, J., dissented, he did so on the ground that the defendants were public corporations, and that the restriction imposed by the contract was unreasonable, not on the ground that some restriction of the right to trade was not an essential element of the crime prohibited by the Act of Congress.

B. Contracts, combinations or conspiracies to restrain the manufacture of goods in any State, or to affect the price of the same before they enter into trade or commerce, though they may, by virtue of diminished manufacture, or enhanced price, indirectly affect trade or commerce, are not within the statute.

The Congress of the United States has no jurisdiction over articles which are manufactured, because of the fact that they are manufactured with an intent later to sell the same to citizens of another State, or to transport them to another State. No article forms part of the trade or commerce which can be regulated by Congress until it is bought, sold or exchanged, for the purpose of such transit, or is put in the way of transit by being delivered to a carrier, or otherwise. Congress regulates trade and commerce between the States, *i. e.*, contracts to buy, sell or exchange goods to be transported, the actual transportation and the instrumentalities of transportation.

If men agree that they will not transport goods from one State to another, they make a contract in restraint of trade between States. If, however, they simply agree that they will not manufacture goods within a certain State, even though this may result in there being no trade with another State in such goods, because they will not be manufactured, Congress cannot interfere.

It would be impossible for Congress to prevent a purchase by the American Sugar Refining Company of a Pennsylvania refinery, and a subsequent alteration of the same into a boarding-house.

The State of Pennsylvania might forbid the manufacture of sugar within its limits. Congress could not prevent this, because such regulation would not interfere with trade or commerce between the States, even though such trade might indirectly be affected. It would be perfectly lawful for the State of Pennsylvania to authorize one corporation to buy up all the manufactories of a certain article in the State, provided it did not confer power upon such corporation to exclude all others from manufacturing like articles. Such legislation, however, even if illegal, would not be illegal in a way that would be within the power of Congress to prescribe or forbid.

A purchase of the shares of stock of a manufacturing corporation of Pennsylvania, though it may result in an interference with manufacturing, is not one which restrains trade, or commerce, or is within the regulating power of Congress.

In Veazie *vs.* Moore, 14 Howard, 568, 574, the law was thus stated by Mr. Justice Daniel:—

> Nor can it be properly concluded that because the products of domestic enterprise in agriculture, or manufactures, or in the arts may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase "foreign commerce," or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and franchises of the country; for there is not one of these avocations the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals

or railroads from point to point within the several States towards an ultimate destination like the one above mentioned.

In Coe *vs.* Erroll, 116 U. S. Rep., 517, the question was presented to the United States Supreme Court, whether a State had an unlimited power of taxation of goods produced therein and intended for exportation to another State. Mr. Justice Bradley delivered the following opinion:—

> This question does not present the predicament of goods in the course of transportation through a State, though detained for a time within the State by low water or other causes of delay, as was the case of the logs cut in the State of Maine, the tax on which was abated by the Supreme Court of New Hampshire. Such goods are already in the course of commercial transportation, and are clearly under the protection of the Constitution, and so we think would the goods in question be when actually started in the course of transportation to another State, or delivered to a carrier for such transportation. There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the State of their origin to that of their destination. * * * It is true it was said in the case of the "Daniel Ball," 10 Wallace, 557, whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. The carrying them in carts or other vehicles, or even floating them to the depot where the journey is to commence, is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed or certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State.

In the case of Kidd *vs.* Pearson (128 U. S., 1) the Supreme Court held that the police power of the State was supreme over goods which had not been put in course of transmission, even though those goods were intended for exportation. Mr. Justice Lamar said (page 23):—

> We have seen that whether a State, in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, is not any longer an open question before this court. Is that right

to be overthrown by the fact that the manufacturer intends to export the liquors when made? Does the statute, in omitting to except from its operation the manufacture of intoxicating liquors within the limits of the State for export, constitute an unauthorized interference with the power given to Congress to regulate commerce? * * * This court has already decided that the fact that an article was manufactured for export to another State does not of itself make it an article of interstate commerce within the meaning of section 8, article I., of the Constitution, and that the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce. * * * The police power of a State is as broad and plenary as its taxing power, and property within the State is subject to the operations of the former so long as it is within the regulating restrictions of the latter.

See Paul *vs.* Virginia, 8 Wallace, 168.

In *In re* Greene, 52 Fed. Rep., 104, already cited, Mr. Justice Jackson said:—

It is equally clear that Congress has no jurisdiction over, and cannot make criminal, the ends, purposes and intentions of persons in the acquisition and control of property which the States of their residence or creation sanction and permit. It is not material that such property, or the products thereof, may become the subject of trade or commerce among the several States, or with foreign nations. Commerce among the States, within the exclusive regulating power of Congress, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property as well as the purchase, sale and exchange of commodities. (County of Mobile *vs.* Kimball, 102 U. S., 691; Gloucester Ferry Co. *vs.* Penna., 114 U. S., 203.)

In the application of this comprehensive definition it is settled by the decisions of the Supreme Court that such commerce includes not only the actual transportation of commodities and persons between the States, but also the instrumentalities and processes of such transportation, that it includes all the negotiations and contracts which have for their object, or involve as an element thereof, such transmission or passage from one State to another, that such commerce begins and the regulating power of Congress attaches when the commodity or thing traded in commences its transportation from the State of its production or *situs* to some other State or foreign country, and terminates when the transportation is completed and the property has become a part of the general mass of property in the State of its destination. When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State. At that time the power and regulating authority of the State ceases and that of Congress attaches and continues until it has reached another State and becomes mingled with the general mass of property in the latter State. That neither the production or manufacture of articles or commodities which constitute subjects of commerce and which are intended for trade and traffic with citizens of other States, nor the preparation for their transportation from the State where produced or manufactured prior to the commencement of the actual transfer or transmission thereof to another State, constitutes that interstate commerce which comes within the regulating power of Congress. * * * It was certainly not a monopoly in the legal sense of the term for the accused or the Distilling and Cattle Feeding Company to own seventy distilleries and the products thereof, whether such products amounted to the whole or a large part of what was produced in the country. Their ownership and control of such products as subjects of trade and commerce is not what the statute condemns, but the monopoly or attempt to monopolize the interstate trade or commerce therein.

V. NO OFFENSE HAS BEEN ESTABLISHED WITHIN THE MEANING OF THE "SHERMAN ACT."

No contract, combination or conspiracy to restrain trade between the States, or to restrain any trade, was proven. A corporation within its chartered powers bought stock, which it had a right to buy. The owners of said stock, exercising their rights of ownership, sold stock which they had a right to sell. The subject-matter of the sale was shares of stock, not trade or commerce. At worst, trade or commerce could only be indirectly affected. Nothing was done to restrain the same; nor to interfere with other persons building manufactories and refining sugar, nor with the owners of the other existing manufactories, from refining and selling sugar.

What is called a "monopoly" was nothing more than the acquisition of property within the legal right of the one who acquired the same. The idea necessary to a monopoly, or to a restraint of trade, viz., the exclusion or restraint of others, was absolutely lacking.

VI. NO CASE HAS BEEN MADE OUT ENTITLING COMPLAINANT TO EQUITABLE RELIEF BY WAY OF AN INJUNCTION, EVEN THOUGH THE STATUTE HAS BEEN OFFENDED AGAINST.

1. By the Constitution of the United States no person can be convicted of crime without trial by jury. A misdemeanor,

such as that defined by the Act of 1890, was held in Callahan *vs.* Wilson, 127 U. S., 540, to be within the meaning of "crime" as used in the Constitution. By such a decree as is prayed for in this case, a court of equity would find persons guilty of an offense without trial by jury.

2. The courts of the United States cannot have conferred upon them by Congress equity jurisdiction to restrain a crime or misdemeanor. As early as Gee *vs.* Pritchard, 2 Swanston, 440, Lord Eldon declared that he had no jurisdiction to prevent the commission of crime. As late as *In re* Sawyer, 124 U. S., page 200, Mr. Justice Gray said:—

> Any jurisdiction over criminal matters that the English Chancery ever had became obsolete long ago, except as incidental to its peculiar jurisdiction, for the protection of infants, or under its authority to issue writs of *habeas corpus* for the discharge of persons unlawfully imprisoned.

During all this period it has never been doubted that a court of equity will not lend its process to aid or to restrain, for the benefit of the community, criminal proceedings. It has been well settled that a court of equity has no jurisdiction to enjoin, either at the suit of the State, or of a private individual, an act *merely* because it is unlawful. The leading case in this country is Attorney-General *vs.* Utica Insurance Company, 2 Johnson's Ch., 371, in which an application by the Attorney-General was made for an injunction against a corporation restraining it from unlawfully carrying on banking operations. Chancellor Kent, in refusing the injunction, said:—

> If a charge be of a criminal nature, or an offense against the public, and does not touch the enjoyment of property, it ought not to be brought within the direct jurisdiction of this court, which was intended to deal only in matters of civil right resting in equity, or where the remedy at law was not sufficiently adequate. * * * If the defendants are carrying on banking operations contrary to law they ought undoubtedly to be restrained, but I cannot be of opinion that the operation is a mischief or public nuisance as to require the immediate and extraordinary process of this court to abate it. I know that the court is in the practice of restraining private nuisances to property, and of quieting persons in the enjoyment of private rights; but it is an extremely rare case and must be considered, if it ever happens, as an anomaly, for a court of equity to

interfere at all, and much less properly by injunction, to put down a public nuisance which did not violate the rights of property, but only contravened the general policy.

In Babcock *vs.* New Jersey Stock Yard Co., 20 N. J. Equity, 296, the court said:—

> The preliminary question was raised whether the charter of the corporate defendants relieves them from the effect of the statute of April 6th, 1865, against the carrying on of offensive trades in Hudson County east of the Hackensack. This, as it was fully argued, and with great ability by counsel on both sides, I will not determine here for two reasons: First, because it is a question of law which may be considered doubtful, or that is, at least, in good faith disputed, and has not been adjudicated by the courts of law of this State, and therefore this court must not grant a preliminary injunction found on that statute; secondly and chiefly, because if that statute was enforced against the operations of this company, it would simply render the manufacture of offal and animal remains unlawful. But this court could not enjoin it any more than it could the selling of liquor by small measures without a license or any other unlawful act, simply because unlawful, unless it caused irreparable injury for which there was no redress at law.

In the case of Cope *vs.* The Fair Association, 99 Ill., 489, where a stockholder of a fair association filed a bill "to restrain the company from permitting, for a pecuniary reward, "gamblers to congregate and ply their vocation on the fair "grounds," the court refused the injunction, saying:—

> It is no part of the mission of equity to administer the criminal law of the State, or to enforce the principles of religion and morality, except so far as it may be incidental to the enforcement of property rights, and perhaps other matters of equitable cognizance. * * * Gambling, such as that complained of, is a violation of the criminal code, which affords ample means for its suppression.

In Spellier on Extraordinary Relief, section 24, it is said:—

> Equity has no jurisdiction to interpose for the prevention of crime, or to enforce moral obligations, nor will it interfere for the prevention of illegal acts merely because they are illegal. Aid will not be extended by injunction to restrain the violation of public or penal statutes, or in any such case, in the absence of any injury to property rights. One reason for non-interference is a fundamenial want of jurisdiction; another is the existence of an adequate remedy at law. In other words, the subject-matter of equity jurisdiction is the protection of civil rights and private property, and not the punishment or prevention of crime or immoral acts when not in connection with violations of private rights.

In Carleton *vs.* Rugg, 149 Mass., 550, 556, the Supreme Court of Massachusetts, in sustaining the right to enjoin a public nuisance, said :—

> It would be an anomalous proceeding for a court to enjoin a defendant from committing the crime of larceny, or of selling intoxicating liquors, with a view to punish as disobedience of the injunction and contempt of court, the same act which was before punishable as a crime. If that could be done, an accused person through a mere change of form in the proceedings might be punished for a crime without a trial by jury, and in violation of both the Federal and State Constitutions. There would be strong ground for contending that a statute which should attempt to authorize such a method of preventing or punishing ordinary crimes would be unconstitutional. Indeed, even where a plaintiff seeks the aid of a court of equity to protect him from irreparable injury through the threatened publication of a libel, or the commission of some other like crime, the courts decline to interfere.

3. The Act of 1890 authorizes the institution of "proceedings in equity." No new statutory method of proceeding is created, but the jurisdiction of equity is extended to the subject of the Act. In administering relief, therefore, the courts must be guided by the established principles of equity jurisprudence, and judged by these principles and irrespective of the question already discussed as to the restraining of a crime, no case for an injunction has been made out.

What relief is asked in this case? To surrender the stock which has been delivered, and to enjoin against the continuance of the illegal act? The power given to courts is to restrain and enjoin; not to decree a surrender of property which has already passed. The shares of stock may have been parted with by those who have received them. How can the court order their return? The continued retention of these shares is no misdemeanor.

If we write out the injunction asked for, will it not read, substantially, as one enjoining against a continuance of their ownership of their shares by the private persons who have received payment for their property? How will this accomplish any good? Will the court order the American Sugar Refining Company not to continue its ownership of the shares of stock of the Philadelphia refineries? Who then will control the shares? Will the effect of this injunction be to compel the running of the refineries? If so, by whom? If the refineries are not run, how will the United States be benefited? The effect of this injunction will be directly to restrain the production of things necessary for trade.

If this court has jurisdiction in equity it can only be exercised for the causes which have been deemed sufficient to warrant equitable interference, viz.: In the case of private persons, to restrain acts injurious to their property rights or to their persons, and in the case of the Government, to restrain interference with *quasi* property rights.

A nuisance, *quâ* nuisance, cannot be enjoined at the instance of the public; but a nuisance which interferes with the right to the use of a highway may. So perhaps a contract in restraint of trade which prevents the public from receiving its supply of goods, or from receiving them saving at exorbitant prices, might justify an injunction. This, however, will only be decreed, and equity will only interfere, in a case where an adequate remedy is not provided at law. Equitable interference will only be granted on proof of irreparable injury.

In this case no such injury has been proven. The thing affected is not a raw material of limited production, but a manufactory. Such manufactories may, without limit, be constructed. There has been no interference with trade between the States. There has been no proof of any enhanced price. If the combination be illegal it has worked no public injury. Its illegality, if it be such, can be punished by criminal proceedings. There has been no ground whatever laid showing a state of facts which calls for equitable interference.

In High on Injunctions, section 742, it is said:—

> When the injury complained of is not, *per se*, a nuisance, or may or may not become so, according to circumstances, and when it is uncertain, indefinite or contingent or productive of only possible injury, equity will not interfere.

In addition to this, if equity interferes in the present case it will be to enforce a doubtful legal right. This is a jurisdiction that chancellors have always abhorred.

See Matthews *vs.* Associated Press, 136 N. Y., 333;
Badisch & Annalin *vs.* Schott, Law Rep., Ch. Div., 1892, vol. 3, page 447;
Mogul Express Co. *vs.* Ship Co., Law Rep., Ap. Ca., 1892, page 25.

The contract was to sell shares and it has been executed.

There is no combination unless it can be said that a corporation may combine with itself. Even if its mere corporate existence be an illegal combination, the fact of such illegality is one to be dealt with by the State of New Jersey, which, by its legislation, has permitted the incorporation.

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